

NBS
PUBLICATIONS



A11104 051914

NBSIR 84-2992 (R)

Guidelines for NBS Standards Committee Participants

U.S. DEPARTMENT OF COMMERCE
National Bureau of Standards
Office of Product Standards Policy
Gaithersburg, Maryland 20899

December 1984



U.S. DEPARTMENT OF COMMERCE
NATIONAL BUREAU OF STANDARDS

QC
100
U56
84-2992
1984
C. 2

CRC

QC100

.U56

NO. 84-2992

1984

C. 2

NBSIR 84-2992

**GUIDELINES FOR NBS STANDARDS
COMMITTEE PARTICIPANTS**

December 6, 1984

Prepared by the Office of
Product Standards Policy

Approved by the Standardization
Advisory and Coordination
Committee

U.S. DEPARTMENT OF COMMERCE
National Bureau of Standards
Office of Product Standards Policy
Gaithersburg, MD 20899

December 1984

U.S. DEPARTMENT OF COMMERCE, Malcolm Baldrige, Secretary
NATIONAL BUREAU OF STANDARDS, Ernest Ambler, Director

PREFACE

This document provides guidance to NBS employees who participate in voluntary standards development activities of standards bodies. The information provided reflects Federal policy as stated in Office of Management and Budget Circular A-119 as well as Bureau policy relating to voluntary standards activities.

These guidelines represent a revision of a document issued in January 1972. This revision was prepared by the Office of Product Standards Policy, the organization within the Bureau responsible for the formulation and implementation of Federal government standards policy. This document was reviewed and approved by the NBS Standardization Advisory and Coordination Committee (SACC) under its responsibility to advise management on Bureau-wide issues relating to standardization activities.

NBS employees are encouraged to become familiar with these guidelines as well as with the several documents in the appendices. NBS managers should assure that NBS staff participation in standards activities conforms to these guidelines.

Suggestions for improvements and comments or questions relating to the contents of this document should be forwarded to the Office of Product Standards Policy.

TABLE OF CONTENTS

Guidelines for NBS Standards Committee Participants

	<u>Page</u>
Preface	iv
1. Introduction	1
2. Appointment to a Standards Committee	1
3. Funding	1
4. Responsibilities of NBS Representatives on a Standards Committee	2
5. National Center for Standards and Certification Information ...	3
6. References Included in Appendices	3
7. Other References	4

Appendices

A. GMB Circular A-119	5
B. Administrative Manual Subchapter 3.02	11
C. Administrative Manual Subchapter 3.03	17
D. Title IV of the Trade Agreements Act of 1979	21
E. Guidelines for Participation by U.S. Government Agencies, Employees, or Representatives in International Standards- Related Activities	27

Guidelines for NBS Standards Committee Participants

1. Introduction

These guidelines are designed to provide standards committee participants with an understanding of their responsibilities.

NBS has participated in standards activities since the early 1900's. Through standards participation, staff are able to contribute technical expertise and gain valuable information relating to industry practices and needs, thus helping to guide NBS research programs.

OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards," states that "when properly conducted, standards development can increase productivity and efficiency in industry, expand opportunities for international trade, conserve resources, and improve health and safety."¹ It is also noted that standards activities, "if improperly conducted, can suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect trade, commerce, health or safety."¹

Because standards have a significant effect in the marketplace, participants have specific responsibilities in the standards development process, as well as general obligations as Federal employees.

Participants are encouraged to contact the Office of Product Standards Policy of NBS for any additional information or assistance they may need in their standards activity.

2. Appointment to a Standards Committee

Participation in a standards committee is a management decision. Consideration is given to unit mission and goals, resource commitments, and technical competence required. Standards committee participants are required to complete and have approved by their supervisor NBS Form 83, "Record of Committee Assignment."²

3. Funding

When participating in a standards activity, the cost is normally paid by the organizational unit at NBS or another Federal agency. Federal funds can not be used to pay individual membership fees. NBS does pay certain administrative and organizational fees.³

4. Responsibilities of NBS Representatives on a Standards Committee

a) Keep Management Informed

Standards committee participants are to keep their supervisor informed especially where other NBS representatives are involved and coordination of viewpoints is necessary or desirable. Participants are to seek the help and advice of the Office of Product Standards Policy at NBS on policy and procedural matters.

b) Coordinate with Federal Participants

Participants should interact with other Federal agency committee members. OMB Circular A-119 states that, "when two or more agencies participate in a given voluntary standards body or standards-developing group, their representatives should coordinate views on matters of paramount importance so as to present a single, unified position."

c) Report "High-Impact" Issues

NBS has adopted specific recommendations for identifying sensitive standards-related issues to be brought to the attention of the Director of the Office of Product Standards Policy and the MOU Director. A "high-impact" issue is one that meets any one of the following criteria:

- 1) It may be brought to the attention of the Director of NBS or the Secretary of Commerce by one or more outside groups, such as Congress, another Federal agency, a trade association, an industrial firm, or an influential individual.
- 2) It contains the potential for outside criticism of NBS by reputable persons or organizations.
- 3) It involves broad coordination across internal NBS operating units or agency boundaries.
- 4) It generates a need for policy guidance regarding appropriate limits of NBS responsibility, whether technical or financial.
- 5) It would have significant impact on the United States' industrial position.

d) Encourage Innovation

The use of performance criteria in standards will generally encourage innovation. Design specifications or the inclusion of a patented device, material or process may unnecessarily limit technical progress.

e) Consider International Standardization

Participants should be aware of international standardization activities related to their national standards committee work. The United States is obligated under the Trade Agreements Act of 1979 to adopt international standards, where appropriate.⁴

f) Know the Rules

Participants should familiarize themselves with the scope of the standards committee and the standards body's policies and procedures. The use or abuse by participants in standards committee activities of standards procedures to restrict competition is improper and violative of various Federal and state antitrust statutes. Violators of those statutes are subject to civil and criminal prosecution.

g) Keep Records

Participants should maintain a file of committee-related information including the committee by-laws, current membership list, minutes of committee meetings, final ballots, and relevant correspondence. This file should be retained by the participant or the unit for at least 5 years.

5. National Center for Standards and Certification Information

The Office of Product Standards Policy maintains the National Center for Standards and Certification Information (NCSCI) with a reference collection of over 240,000 standards, specifications and codes published by U.S. professional and technical societies, state purchasing offices, U.S. Government agencies, and major national and international bodies. The collection also contains articles, pamphlets, reports, and handbooks on standardization and over 100 foreign and domestic periodicals and newsletters published by standards organizations.⁵ NCSCI has access to computerized data bases and Key-Word-In-Context (KWIC) indexes.

6. References - (attached)

- 1) Office of Management and Budget Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards," Federal Register, Vol. 47, No. 211, p. 49496, dated November 1, 1982.
- 2) NBS Administrative Manual Subchapter 3.02, "Standards and Professional Committees," dated November 13, 1984.
- 3) NBS Administrative Manual Subchapter 3.03, "Payment of Fees for Private Voluntary Standards Activities," dated July 8, 1983.
- 4) a) Trade Agreements Act of 1979, Public Law 96-39, July 26, 1979, Title IV, "Technical Barriers to Trade (Standards)"
b) "Guidelines for Participation by U.S. Government Agencies, Employees, or Representatives in International Standards-Related Activities," issued by the Secretary of Commerce, Federal Register, Vol. 49, No. 32, p. 5792, dated February 15, 1984.

7. Other References - (available from OPSP)

- 1) "Standards Committee Activities of NBS" - an annual report describing Bureau contributions in standards activities.
- 2) "Directory of NBS Staff Memberships" - a semi-annual report listing committee participation by staff.
- 3) "Standards Activities of Organizations in the United States" - NBS Special Publication 681, (1984).
- 4) "Directory of International and Regional Organizations Conducting Standards-Related Activities" - NBS Special Publication 649, (1983).

APPENDIX A

OMB Circular A-119

"Federal Participation in the Development and Use of Voluntary Standards"

FOR FURTHER INFORMATION CONTACT: David F. Baker, Office of Federal Procurement Policy, Office of Management and Budget, Washington, DC 20503 (202) 395-7207.

SUPPLEMENTARY INFORMATION: On April 21, 1982, the Office of Management and Budget published a draft Circular, subject as above, for a 60-day period of public and agency comment. Comments were received from more than 120 individuals and organizations, including Federal agencies, business firms, industry associations, professional groups and private citizens.

There follows a summary of the major comments grouped by subject and a response to each—including a brief description of changes made as a result of the comments. Many other changes of a less significant character were made to increase clarity, simplicity, precision and readability, and to reduce the burdens of compliance as much as possible.

A. Procedural Criteria Imposed on Standards Developers

Comment: Several commenters objected to OMB's deletion of specific procedural criteria which the previous version of the Circular imposed on voluntary standards bodies as a precondition to Federal participation. They argued that such criteria—intended to increase public participation and openness—would help to minimize the potential for anti-trust activities. Other commenters suggested that while such procedures should not be mandatorily imposed, OMB should instruct agencies to encourage private standards developers to follow such procedures.

Response: With regard to the inclusion of procedural criteria and their mandatory imposition on standard developers, we have concluded that imposition of the mandatory procedures contained in the previous edition of the Circular is inappropriate, burdensome and costly and that the question of imposing such criteria is peripheral to the fundamental aims of the Circular. We do agree that, as with any human endeavor, the voluntary standards development process is vulnerable to abuse. Consequently, we have cautioned Federal agencies to beware of such potential (Para. 7). We have also provided guidance to agencies in the form of a letter from the Department of Justice, dated June 22, 1982, which discusses suggested agency approaches to the question of public participation in private sector standards development.

B. Regulatory Applications

Comment: Some commenters suggested that the Circular should be limited to procurement applications, and that Federal agencies should not be required to use voluntary standards for regulatory purposes. Some commenters suggested, in addition, that the Circular should not apply to "independent regulatory agencies".

Response: We believe the benefits to be derived from the procurement use of standards are equally valid for regulatory applications—particularly the benefits of assuring private sector input into Federal regulatory activities while reducing the potential for duplicating existing, adequate voluntary standards with Government standards. With regard to the second concern, the Circular does not "require" Federal agencies to use voluntary standards for regulatory purposes. It establishes a policy preference in that regard but leaves to the agencies, themselves, the decision as to whether to adopt a given voluntary standard for a specific Federal regulatory purpose. (The legal requirements associated with such adoption, such as those of the Administrative Procedures Act, will, of course, continue to apply.) We believe such an approach is entirely appropriate with respect to independent regulatory agencies as with the rest of the Executive Branch.

C. Role of the Department of Commerce

Comment: Several commenters objected to the requirements that the Department of Commerce maintain listings of (1) voluntary and Government standards, (2) voluntary standards bodies, and (3) those standards organizations with which Federal agencies interact—on the grounds that this would result in extensive and costly reporting requirements. Other commenters suggested that the agency reporting requirements contained in the Circular were, themselves, overly burdensome.

Response: We agree. The requirements to maintain various listings have been eliminated. The provisions dealing with reports on agency implementation of the Circular have been revised to require that reports be summary, as opposed to detailed, in nature.

D. Voluntary Dispute Resolution Service

Comment: Some commenters objected to our deletion of the requirement that the Department of Commerce establish a program to make available a "voluntary dispute resolution service" to handle predecisional complaints brought by

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards"

AGENCY: Office of Management and Budget.

ACTION: Final Issuance of OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards."

SUMMARY: This OMB Circular provides policy and administrative guidance to Federal agencies on using voluntary standards for procurement and regulatory purposes, on participating with private sector organizations to develop such standards, and coordinating Executive Branch participation in the development of voluntary standards. Implementation of this Circular is expected to result in reduced costs to the Government in developing and maintaining standards for products, systems and services.

EFFECTIVE DATE: This Circular, which supersedes OMB Circular No. A-119, dated January 17, 1980, is effective upon publication.

interested parties against voluntary standards bodies. Those commenters suggested that such a mechanism would provide an impartial means of resolving standards disputes without costly and lengthy litigation.

Response: While we take no position on the substantive merits of such a mechanism, we are satisfied that the requirement to establish such a service is not an appropriate element for inclusion in this Circular. Agencies with mission concerns in this area (e.g., Commerce, Justice, etc.) may, of course, consider establishing such a service as it is within their province to do so. The creation of the mechanism is clearly peripheral to the policy issues dealt with in the Circular, however, which are limited to Federal participation in the development and use of voluntary standards.

E. Single Federal Position

Comment: Many commenters suggested that the provisions of the Circular that required agencies to coordinate their views and express a single Federal position in private sector standards development activities were unnecessary and unworkable—and that establishment of a mechanism to achieve these purposes would be costly and lead to lengthy delays in the standards development process.

Response: We continue to believe that agencies should endeavor to coordinate their views and present single Federal positions in matters of paramount importance. We agree, however, that the requirement to do so in all such instances is unreasonable and could lead to bureaucratic delays. Consequently, we have eliminated the requirement that Federal positions must be developed in all instances, as well as those provisions which would have required the Secretary of Commerce to appoint a "lead" agency when disagreements as to the nature of the Government's position occurred on a given issue. We continue to expect agency representatives to make a reasonable effort to present a single Federal position reflective of the public interest on matters on paramount interest in those standards activities wherein two or more agencies participate.

Candice C. Bryant,
Acting Deputy Assistant Director for
Administration.

Executive Office of the President

Office of Management and Budget

October 26, 1982.

Memorandum to Heads of Executive
Departments and Agencies

From: David A. Stockman

Subject: OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards"

Attached, for your implementation, is a revision to OMB Circular No. A-119 which provides guidance to agencies in working with, and using the products of, private sector standards organizations. The effect of this revision is to eliminate the costly, unnecessary, and burdensome aspects of the Circular, while continuing to encourage agency participation in the development of private sector standards.

Also attached for your information and use is a letter, dated June 22, 1982, from the Department of Justice, which provides guidance in the implementation of the Circular—particularly as it relates to working with private sector groups to develop needed standards.

Executive Office of the President

Office of Management and Budget

October 26, 1982.

Circular No. A-119—Revised

To the Heads of Executive Departments and
Establishments

Subject: Federal Participation in the
Development and Use of Voluntary
Standards

1. *Purpose.* This Circular establishes policy to be followed by executive agencies in working with voluntary standards bodies. It also establishes policy to be followed by executive branch agencies in adopting and using voluntary standards.

2. *Rescissions.* This Circular superseeds OMB Circular No. A-119, dated January 17, 1980, which is rescinded.

3. *Background.* Many Governmental functions involve products or services that must meet reliable standards. Many such standards, appropriate or adaptable for the Government's purposes, are available from private voluntary standards bodies. Government participation in the standards-related activities of these voluntary bodies provides incentives and opportunities to establish standards that serve national needs, and the adoption of voluntary standards, whenever practicable and appropriate, eliminates the cost to the Government of developing its own standards. Adoption of such standards also furthers the policy of reliance upon the private sector to supply Government needs for goods and services, as enunciated in OMB Circular No. A-76.

4. *Applicability.* This Circular applies to all executive agency participation in voluntary standards activities, domestic and international, but not to activities carried out pursuant to treaties and international standardization agreements.

5. *Definitions.* As used in this Circular:

a. *Executive agency* (hereinafter referred to as "agency") means any executive department, independent commission, board, bureau, office, agency, Government-owned or—controlled corporation or other establishment of the Federal Government, including regulatory commission or board. It does not include the legislative or judicial branches of the Federal Government.

b. *Standard* means a prescribed set of rules, conditions, or requirements concerned with the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, design, or operations; measurement of quality and quantity in describing materials, products, systems, services, or practices; or descriptions of fit and measurement of size.

c. *Voluntary standards* are established generally by private sector bodies and are available for use by any person or organization, private or governmental, the term includes what are commonly referred to as "industry standards" as well as "consensus standards", but does not include professional standards of personal conduct, institutional codes of ethics, private standards of individual firms, or standards mandated by law, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351.

d. *Government standards* include individual agency standards and specifications as well as Federal and Military standards and specifications.

e. *Voluntary standards bodies* are private sector domestic or multinational organizations—such as nonprofit organizations, industry associations, professional and technical societies, institutes, or groups, and recognized test laboratories—that plan, develop, establish, or coordinate voluntary standards.

f. *Standards-developing groups* are committees, boards, or any other principal subdivisions of voluntary standards bodies, established by such bodies for the purpose of developing, revising, or reviewing standards, and which are bound by the procedures of those bodies.

g. *Adoption* means the use of the latest edition of a voluntary standard in whole, in part, or by reference for procurement purposes and the inclusion of the latest edition of a voluntary standard in whole, in part, or by reference in regulation(s).

h. *Secretary* means the Secretary of Commerce or that Secretary's designee.

6. *Policy.* It is the policy of the Federal Government in its procurement and regulatory activities to:

a. Rely on voluntary standards, both domestic and international, whenever feasible and consistent with law and regulation pursuant to law;

b. Participate in voluntary standards bodies when such participation is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget resources; and

c. Coordinate agency participation in voluntary standards bodies so that (1) the most effective use is made of agency resources and representatives; and (2) the views expressed by such representatives are in the public interest and as a minimum do not conflict with the interests and established views of the agencies.

7. *Policy Guidelines.* In implementing the policy established by this Circular, agencies should recognize the positive contribution of standards development and related activities.

When properly conducted, standards development can increase productivity and efficiency in industry, expand opportunities for international trade, conserve resources, and improve health and safety. It also must be recognized, however, that these activities, if improperly conducted, can suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect trade, commerce, health, or safety. Full account shall be taken of the impact on the economy, applicable Federal laws, policies, and national objectives, including, for example, laws and regulations relating to antitrust, national security, small business, product safety, environment, technological development, and conflicts of interest. It should also be noted, however, that the provisions of this Circular are intended for internal management purposes only and are not intended to (1) create delay in the administrative process, (2) provide new grounds for judicial review, or (3) create legal rights enforceable against agencies or their officers. The following policy guidelines are provided to assist and govern implementation of the policy enunciated in paragraph 6.

a. *Reliance on Voluntary Standards.* (1) Voluntary standards that will serve agencies' purposes and are consistent with applicable laws and regulations should be adopted and used by Federal agencies in the interests of greater economy and efficiency, unless they are specifically prohibited by law from doing so.

(2) Voluntary standards should be given preference over non-mandatory Government standards unless use of such voluntary standards would adversely affect performance or cost, reduce competition, or have other significant disadvantages. Agencies responsible for developing Government standards should review their existing standards at least every five years and cancel those for which an adequate and appropriate voluntary standard can be substituted.

(3) In adopting and using voluntary standards, preference should be given to those based on performance criteria when such criteria may reasonably be used in lieu of design, material, or construction criteria.

(4) Voluntary standards adopted by Federal agencies should be referenced, along with their dates of issuance and sources of availability, in appropriate publications, regulatory orders, and related in-house documents. Such adoption should take into account the requirements of copyright and other similar restrictions.

(5) Agencies should not be inhibited, if within their statutory authorities, from developing and using Government standards in the event that voluntary standards bodies cannot or do not develop a needed, acceptable standard in a timely fashion. Nor should the policy contained in this Circular be construed to commit any agency to the use of a voluntary standard which, after due consideration, is, in its opinion, inadequate, does not meet statutory criteria, or is otherwise inappropriate.

b. *Participation in Voluntary Standards Bodies.* (1) Participation by knowledgeable agency employees in the standards activities

of voluntary standards bodies and standards-developing groups should be actively encouraged and promoted by agency officials when consistent with the provisions of paragraph 6b.

(2) Agency employees who, at Government expense, participate in standards activities of voluntary standards bodies and standards-developing groups should do so as specifically authorized agency representatives.

(3) Agency participation in voluntary standards bodies and standards-developing groups does not, of itself, connote agency agreement with, or endorsement of, decisions reached by such bodies and groups or of standards approved and published by voluntary standards bodies.

(4) Participation by agency representatives should be aimed at contributing to the development of voluntary standards that will eliminate the necessity for development or maintenance of separate Government standards.

(5) Agency representatives serving as members of standards-developing groups should participate actively and on a basis of equality with private sector representatives. In doing so, agency representatives should not seek to dominate such groups. Active participation is intended to include full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities. Agency representatives may vote, in accordance with the procedures of the voluntary standards body, at each stage of standards development, unless specifically prohibited from doing so by law or their agencies.

(6) The number of individual agency participants in a given voluntary standards activity should be kept to the minimum required for effective presentation of the various program, technical, or other concerns of Federal agencies.

(7) The providing of Agency support to a voluntary standards activity should be limited to that which is clearly in furtherance of an agency's mission and responsibility. Normally, the total amount of Federal support should be no greater than that of all private sector participants in that activity except when it is in the direct and predominant interest of the Government to develop a standard or revision thereof and its development appears unlikely in the absence of such support. The form of agency support, subject to legal and budgetary authority, may include:

(a) Direct financial support; e.g., grants, sustaining memberships, and contracts;

(b) Administrative support; e.g., travel costs, hosting of meetings, and secretarial functions;

(c) Technical support; e.g., cooperative testing for standards evaluation and participation of agency personnel in the activities of standards-developing groups; and

(d) Joint planning with voluntary standards bodies to facilitate a coordinated effort in identifying and developing needed standards.

(8) Participation by agency representatives in the policymaking process of voluntary standards bodies, in accordance with the

procedures of those bodies, is encouraged—particularly in matters such as establishing priorities, developing procedures for preparing, reviewing, and approving standards, and creating standards-developing groups. In order to maintain the private, nongovernmental nature of such bodies, however, agency representatives should refrain from decisionmaking involvement in the internal day-to-day management of such bodies (e.g., selection of salaried officers and employees, establishment of staff salaries and administrative policies).

(9) This Circular does not provide guidance concerning the internal operating procedures that may be applicable to voluntary standards bodies because of their relationships to agencies under this Circular. Agencies should, however, carefully consider what laws or rules may apply in particular instance because of these relationships. For example, these relationships may involve the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), or a provision of an authorizing statute for a particular agency. Agencies are best able to determine what laws and policies should govern particular relationships and to assess the extent to which competition may be enhanced and cost-effectiveness increased. Questions relating to anti-trust implications of such relationships should be addressed to the Attorney General.

8. *Responsibilities.* a. The Secretary will:

(1) Coordinate and foster executive branch implementation of the policy in paragraph 6 of this Circular, and may provide administrative guidance to assist agencies in implementing paragraph 8.b. (5) of this Circular;

(2) Establish an interagency consultative mechanism to advise the Secretary and agency heads in implementing the policy contained herein. That mechanism shall provide for participation by all affected agencies and ensure that their views are considered; and

(3) Report to the Office of Management and Budget concerning implementation of this Circular.

b. The heads of agencies concerned with standards will:

(1) Implement the policy in paragraph 6 of this Circular in accordance with the policy guidelines in paragraph 7 within 120 days of issuance;

(2) Establish procedures to ensure that agency representatives participating in voluntary standards bodies and standards-developing groups will, to the extent possible, ascertain the views of the agency on matters of paramount interest and will, as a minimum, express views that are not inconsistent or in conflict with established agency views;

(3) Endeavor, when two or more agencies participate in a given voluntary standards body or standards-developing group, to coordinate their views on matters of paramount importance so as to present, whenever feasible, a single unified position.

(4) Cooperate with the Secretary in carrying out his responsibilities under this Circular; and

(5) Consult with the Secretary, as necessary, in the development and issuance of internal agency procedures and guidance implementing this Circular, and submit, in response to the request of the Secretary, summary reports on the status of agency interaction with voluntary standards bodies.

9. *Reporting Requirements.* Three years from the date of issuance of this Circular, and each third year thereafter, the Secretary will submit to the Office of Management and Budget a brief summary report on the status of agency interaction with voluntary standards bodies. As a minimum, the report will include the following information:

a. The nature and extent of agency participation in the development and utilization of voluntary standards; and

b. An evaluation of the effectiveness of the policy promulgated in this Circular and recommendations of change.

10. *Policy Review.* The policy contained in this Circular shall be reviewed for effectiveness by the Office of Management and Budget three years from the date of issuance.

11. *Inquiries.* For information concerning this Circular, contact the Office of Management and Budget, Office of Federal Procurement Policy, telephone 202/395-7207. David A. Stockman, Director.

Department of Justice

Antitrust Division

Office of the Assistant Attorney General

June 22, 1982.

Mr. Donald E. Sowle,

Administrator for Federal Procurement Policy

Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Sowle: I am writing to express the views of the Department of Justice on competition policy issues raised by the Revised OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards" published for comment in the Federal Register on April 29, 1982 (47 Fed. Reg. 16, 919).

In our comments on previous drafts of the Circular, dated December 26, 1976 and June 13, 1978, we have supported a policy of federal adoption of privately developed standards when appropriate. Through participation in, and support for, private standards making activities, agencies may benefit greatly from private expertise and will avoid the wasteful duplication of cost and effort involved in developing their own in-house standards. The Department of Justice is not opposed to the policy announced in Revised OMB Circular A-119, which would eliminate the rigid "due process" precondition to federal participation in private standards activities. Such a precondition is overly restrictive, since as a practical matter federal agencies will often be required to adopt the standards developed regardless of federal participation in their development. Thus, in our view, the better solution is to participate in standards setting bodies and work within them to assure that appropriate procedures are adopted.

The Department believes that federal participants should encourage the adoption of procedures to foster access to standard setting activities and transparency in such activities. Such procedures facilitate the development of standards acceptable to the entire affected industry as well as to consumers. In particular, notice and opportunity for comment help assure that standards will be based on adequate information as to their utility and consequences. Moreover, it is especially important that performance criteria be given a prominent, perhaps predominant, place in any standards activity. Federal agency representatives, therefore, should advocate, as strongly as possible, procedures designed to assure that a broad range of information is solicited, and that performance criteria are central elements of the resulting standards.

In addition to the practical advantages of open standards proceedings, such safeguards would mitigate the substantial anticompetitive potential inherent in private standards groups. The importance of assuring adequate consideration of competition in the work of private standards bodies was noted recently by the Supreme Court in *American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.* The case involved a product standard which had been adopted in 46 states and all but one of the Canadian provinces. The Court observed that organizations creating such standards could be "rife with opportunities for anticompetitive activity." Federal agencies ought to strongly encourage these private groups to ensure consideration of all relevant viewpoints and interests including those of consumers, and potential or existing industry participants.

This country's international obligations and policy, as expressed in the Standards Code negotiated during the Tokyo Round of the Multilateral Trade Negotiations, see the Agreement on Technical Barriers to Trade, codified at 19 U.S.C.A. 2531 *et seq.* (1980), provide another important reason for federal agency participants to encourage the adoption of open procedures for private standards groups. This Code, approved by Congress as well as by our leading trading partners, seeks to prevent the creation of product standards which discriminate against import competition. It requires central governmental bodies to provide notice and opportunity to comment in their own standards making activities, and encourages governments to take reasonable measures to ensure that non-governmental bodies provide similar protection. Where the federal government is in fact involved in the private group, the obligations of the Standards Code would appear even stronger. Open procedures, specifically adequate notice and opportunity to comment, would further the objectives of the Standards Code, and would substantially reduce the possibility that discriminatory, anticompetitive standards will be developed.

The Circular would encourage use of voluntary standards for regulatory and other purposes. Although we applaud this expansion of the scope of the Circular, we believe that broadened federal use of privately developed standards should be

accompanied with broad federal awareness of the practical and competitive advantages of industry-wide access to private standards bodies. Such access is an asset to federal participation in private standards activities, but it is also of great importance when federal agencies, without participation in the process, merely adopt standards for procurement or regulatory use.

As we indicated in our previous comments, private activity is not, by virtue of governmental participation or approval, shielded from the antitrust laws. Federal agency participation in a standards body, however, may imply federal approval of the process and of the resulting standard, and perhaps lead private participants to become lax in their own antitrust scrutiny. To dispel any false impressions, federal agency representatives should inform private participants that federal participation does not remove antitrust concerns, as well as advocate that appropriate procedures be employed in the standards proceedings.

Sincerely yours,

Ronald G. Carr,

Acting Assistant Attorney General, Antitrust Division.

[FR Doc. 82-30017 Filed 10-29-82; 8:45 am]

BILLING CODE 3110-01-M

APPENDIX B

Administrative Manual Subchapter 3.02

"Standards and Professional Committees"

ADMINISTRATIVE
MANUAL

Chapter 3 Committees

Subchapter 3.02 Standards and Professional
Committees

STANDARDS AND PROFESSIONAL COMMITTEES

Sections

- 3.02.01 Purpose
- 3.02.02 Scope
- 3.02.03 Definitions
- 3.02.04 Policy
- 3.02.05 Recognized Types of Committee Participation
- 3.02.06 Appointment Procedures
- 3.02.07 Responsibilities
- 3.02.08 Approval Procedures for Acceptance of Standards
Committee Secretariat Functions
- 3.02.09 Approval Procedures for Accreditation as a
Standards Developer
- 3.02.10 Funding
- 3.02.11 NBS Committee Assignment Recording Officers

3.02.01

PURPOSE

This subchapter establishes policies and procedures for the acceptance and maintenance of membership on government and nongovernment standards and professional committees working in areas related to the activities of the National Bureau of Standards. In the case of standards committees, these policies are consistent with Federal policy guidelines for participation in the development and use of voluntary standards as set out by the Office of Management and Budget (OMB) in OMB Circular A-119 and Department Administrative Order (DAO) 216-14.

3.02.02

SCOPE

- a. The policies and procedures in this subchapter apply to employees at NBS-Gaithersburg and NBS-Boulder.
- b. This subchapter covers standards and professional committees which may be national or international in scope.

3.02.03

DEFINITIONS

- a. Committee - Any board, commission, council, conference, panel, task force,

or other similar group or any subcommittee or other subgroup thereof.

b. Standard - A prescribed set of rules, conditions, or requirements concerned with the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, design, or operations; measurement of quality and quantity in describing materials, products, systems, services, or practices; or descriptions of fit and measurement of size.

c. Standards Committee - Any governmental or nongovernmental committee that exercises policy control over standard activities or that is principally concerned with the administration of standards programs or the development, approval, or promulgation of standards. This includes, for example, all committees of the American Society for Testing and Materials (ASTM), as well as standards committees of professional and scientific organizations such as the Institute for Electrical and Electronics Engineers (IEEE) and the American Nuclear Society (ANS).

d. Professional Committee - Any committee, other than a standards committee, which is concerned with the accomplishment of professional, technical, or scientific objectives.

e. National Committee - Any committee functioning under the jurisdiction of a United States organization or a United States Government agency. Included under this definition are national committees with major international responsibilities, such as the U.S. National Committee for the International Electrotechnical Commission (IEC), American National Standards Institute (ANSI) technical advisory groups for committees of the International Organization for Standardization (ISO), and the U.S. Advisory Committee for International Legal Metrology (ACILM).

f. International Committee - Any committee functioning under the jurisdiction of an international organization (governmental or nongovernmental) such as the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Union of Pure and Applied Chemistry (IUPAC), the International Organization of Legal Metrology (OIML), and the International Committee of Weights and Measures (CIPM).

3.02.04

POLICY

NBS policy encourages and supports participation of the professional staff in professional committee activities relating to the scientific and technical mission of the Bureau and in national and international standards committee activities when such participation is in the public interest and is compatible with the Bureau's mission, authorities, priorities, and budget resources. NBS employee participating in standards and professional committee activities relating to the professional basis of their employment carry an inseparable identification with the Bureau. For this reason, they have a fundamental obligation to avoid actions that are inconsistent with established policies and programmatic objectives of NBS, DoC, and the Administration. However, participation in such committees by employees does not, of itself, connote NBS agreement with or endorsement of decisions reached by such groups or of standards approved and published by voluntary standards bodies.

3.02.05

RECOGNIZED TYPES OF COMMITTEE PARTICIPATION

a. Approval may be given to an employee to work on standards and professional committee assignments:

(1) By reason of individual professional and technical expertise, or

(2) By reason of management or program responsibilities within the Bureau, which may justify participation on boards of directors or similar policy-making bodies of standards or professional organizations.

b. Employees are authorized to serve as full voting members or officers of committees, boards of directors, or similar policy-making bodies of standards and professional organizations unless specifically prohibited from doing so. However, in order to maintain the private nongovernmental nature of standards-developing organizations, NBS participants on boards of directors or policy-making bodies shall refrain from decision-making involvement in the internal day-to-day management of standards-developing organizations (e.g., selection of salaried officers and employees, establishment of staff salaries and administrative policies).

3.02.06

APPOINTMENT PROCEDURES

The employee is responsible for taking the following actions for each requested committee assignment:

a. Complete Form NBS-83, Record of Committee Assignment.

b. Submit Form NBS-83 (original and two copies) to the division chief (or higher official as appropriate) for approval.

Note: Employees invited to participate in boards or other policy-making bodies of professional or standards organizations must additionally submit Form NBS-83 for approval to the NBS Director through the Office of Product Standards Policy (OPSP). The request should include the employee's recommendation as to voting or nonvoting status of participation.

c. Following approval, send Form NBS-83 (original and two copies) to Standards Assistance and Management Information, Standards Management Program (120).

d. Complete and return any forms that may be required by the outside committee or parent organization.

3.02.07

RESPONSIBILITIES

a. Committee Participants

(1) Initiate appointment procedures (see Section 3.02.06);

(2) Ensure that Form NBS-83 is up to date for each committee assignment;

(3) Submit committee documents to the NBS Editorial Review Board (Gaithersburg or Boulder) for notation and review, if the documents name an NBS employee as a principal author and the documents are intended for publication or distribution outside the committee. This requirement applies even when the documents will not be issued as NBS publications. Likewise, submit portions of committee documents that refer to NBS data not previously published to the NBS Editorial Review Board. If any special or extensive testing or other experimental work is undertaken for a committee in Bureau laboratories, such work would be considered for summarization in an NBS report or other publication;

(4) Ensure that questionnaires receive required clearance, if any. Questionnaires sent outside the Government by NBS members of committees must be cleared by the Office of Management and Budget if there are to be 10 or more respondents other than members of the committee or organization in whose name the information is being gathered, and if:

(a) The name of the National Bureau of Standards appears on the form as a sponsor of the inquiry; or

(b) NBS is to be the publisher or user of the results of the survey; or

(c) The committee is sponsored by NBS or by another Government agency, even though NBS or the other Federal agency may not be identified on the questionnaire itself.

The Management Systems Division (348) offers assistance and arranges for required clearances.

(5) Ensure that no conflict of interest is involved in their committee appointments; and

(6) Maintain complete records of committee documents relating to NBS involvement with that committee, including records of all NBS participants' votes on committee ballots.

b. Division Chief (or higher official)

(1) Ensures that the activity is directly related to the authorized functions of NBS and in line with program objectives;

(2) Ensures that the proposed appointee is qualified and can devote enough time and effort to serve creditably;

(3) Ensures that resources (including funds for travel and per diem) are available or in prospect to support necessary participation;

(4) Ensures that the number of individual agency participants in a given activity is kept to the minimum required for effective presentation of NBS concerns;

(5) Ensures that records of committee documents and ballots as prescribed in paragraph 3.02.07a. are maintained within the organizational unit and are readily available for inspection; and

(6) Reviews committee assignments periodically to determine if participation is still appropriate.

c. NBS Office of Product Standards Policy

(1) Monitors committee assignments to ensure that participation of NBS employees is properly authorized and consistent with NBS policy as set forth in Section 3.02.04; and

(2) Submits annually to NBS center directors a report on staff participation in standards activities.

d. NBS Standardization Advisory and Coordination Committee (SACC)

(1) Advises the NBS Director and MOU Directors on Bureauwide issues relating to NBS participation in standardization activities;

(2) Provides Bureauwide representation in the development of recommendations for NBS standards policies and procedures; and

(3) Assists the NBS Director and MOU Directors to ensure that NBS standards participation is effective and efficient. (See Subchapter 3.01 Appendix A for additional responsibilities and functions of the SACC.)

3.02.08

APPROVAL PROCEDURES FOR ACCEPTANCE OF STANDARDS COMMITTEE SECRETARIAT FUNCTIONS

a. NBS organizational units may assume secretariat responsibilities for national and international standards committees and their subgroups and may serve as Administrators of U.S. Technical Advisory Groups providing input to international standards committees. However, in accepting such functions, NBS units should not automatically assume final responsibility for ensuring that all appropriate procedures are followed in the standards development process, but should seek to persuade the sponsoring parent organization to retain this responsibility. The MOU Director or a designee should effect an agreement within the organization that assumes responsibility for ensuring that all appropriate procedures are followed.

b. If acceptance of the secretariat is considered necessary to the accomplishment

of NBS objectives and if no reasonable sponsor or cosponsor will accept the responsibility for assuring due process procedures, the NBS unit may take the responsibility upon approval by the NBS Executive Board. Proposals for NBS acceptance of standards committee secretariat functions are to be submitted through line management to OPSP for policy review prior to submission to the NBS Executive Board for approval.

3.02.09

APPROVAL PROCEDURES FOR ACCREDITATION AS A STANDARDS DEVELOPER

NBS organizational units may seek accreditation as an American National Standards developer if such accreditation is considered to be essential to accomplish NBS objectives. Since ANSI procedures require the standards developer to provide evidence of conformance to due process requirements, proposals for accreditation of NBS units as American National Standards developers are subject to approval by the NBS Executive Board. Proposals for accreditation are to be submitted through line management to OPSP for policy review prior to being submitted to the NBS Executive Board for approval.

3.02.10

FUNDING

a. Overhead funds and appropriated funds (STRS and OA) may not be used for the payment of committee membership fees or dues of officers and employees of the Government (5 U.S.C. 5946).

b. When an employee participates in standards and professional committees with NBS approval, the cost of participation is normally paid by NBS. Expenses involved with attendance at meetings are paid by NBS in accordance with DAO 204-1, Chapter 16 of the NBS Administrative Manual, the DoC Handbook of Travel Policies and Procedures, and the Federal Travel Regulations. If committee activities are performed for the benefit of another agency, it is appropriate for committee-related travel expenses to be charged to that agency.

c. Committee memberships and officerships in professional organizations which involve use of official time should pertain to research, development, testing, standardization, symposia, or administrative work of direct interest to the Bureau. In order to warrant the charging of time and expenditures to technical cost centers, committee activities must be closely related to those cost centers.

d. Where the committee assignment involves travel costs to be financed by an outside group, the employee must obtain a Bureau travel order that either (1) authorizes acceptance of transportation and accommodations in kind, or (2) is charged to the appropriate cost center to which the reimbursement check will be credited. In neither case may the employee accept monetary reimbursement for travel expenses while in duty status since the authority to receive gifts and other reimbursements is limited to the Bureau as an organization and cannot be extended to an employee. Advice can be obtained from the NBS Comptroller on procedures for accepting funds as payment to the Bureau.

e. It is usually inappropriate for the Bureau to take an institutional membership in a private organization. This policy is applicable at all organizational levels within the Bureau. Requests for exceptions to this policy should be sent to the NBS Director through the Chairperson of the Standardization Advisory and Coordination Committee. Exceptions will be granted only with the approval of the NBS Executive Board. See Subchapter 3.03 for information on approvals required for payment of institutional membership fees to voluntary standards bodies.

Currently approved exceptions are the Bureau's institutional memberships in the American Society for Testing and Materials (ASTM); the American National Standards Institute (ANSI); the National Committee for Clinical Laboratory Standards (NCCLS);

the International Council for Building Research, Studies, and Documentation (CIB); and the International Union of Testing and Research Laboratories for Materials and Structures (RILEM).

3.02.11

NBS COMMITTEE ASSIGNMENT RECORDING OFFICERS

a. The Management Systems Division (348) serves as the NBS Liaison Office to the Department of Commerce for all committee matters.

b. Standards Assistance and Management Information, Standards Management Program (120) serves as the NBS Standards and Professional Committee Monitoring Office.

APPENDIX C

Administrative Manual Subchapter 3.03

"Payment of Fees for Private Voluntary Standards Activities"

ADMINISTRATIVE
MANUAL

Chapter 3 Committees

Subchapter 3.03 Payment of Fees for Private
Voluntary Standards Activities

PAYMENT OF FEES FOR PRIVATE VOLUNTARY STANDARDS ACTIVITIES

Sections

- 3.03.01 Purpose
- 3.03.02 Scope
- 3.03.03 Definitions
- 3.03.04 Policy
- 3.03.05 Responsibilities
- 3.03.06 Collection of Fees
- Appendix A - Standard Language for Administrative
Service Fee Contracts
- Appendix B - Collection of ASTM Fees
- Appendix C - Collection of ANSI Fees

3.03.01

PURPOSE

This subchapter states NBS policies and internal procedures for payment of fees in support of NBS participation in private voluntary standards activities.

3.03.02

SCOPE

The policies and procedures in this subchapter apply to NBS-Gaithersburg and NBS-Boulder.

3.03.03

DEFINITIONS

a. Private Voluntary Standards Bodies - Private sector domestic or multinational organizations (such as nonprofit organizations, industry associations, professional and technical societies, institutes, or groups, and recognized test laboratories) that plan, develop, establish, or coordinate voluntary standards.

b. Fees

(1) Institutional Membership Fees (also referred to as "organizational" or "sustaining" membership fees) - Fees paid for the purpose of obtaining institutional

representation in a voluntary standards body. Such fees are intended to be used in support of the organization's general standards-related objectives and programs (i.e., education activities intended to publicize the societal benefits of standardization activities and professional awards programs which provide recognition of individual accomplishments in the field of standardization). An institutional membership usually provides for voting privileges exercised by a representative officially designated by the organization. An NBS institutional membership in a standards body signifies only that NBS endorses the stated purposes of the standards body and that membership is deemed appropriate and necessary in carrying out the mission of NBS. Such membership does not signify that NBS endorses or supports positions taken by the standards body on any subject or issue. An NBS institutional membership in a standards body does not confer individual membership rights or privileges on any member of the NBS staff.

(2) Administrative Service Fees - Fees paid to help cover costs associated with standards committee operation and communication, e.g., preparation and distribution of minutes, circulation of

drafts for comment, meeting arrangements, and maintenance of committee records. Payment of such fees does not confer individual membership rights or privileges on any member of the NBS staff nor result in NBS being recognized as an institutional member of the standards body.

(3) Individual Membership Fees - Fees paid to standards bodies for the purpose of obtaining membership rights or privileges for individuals.

3.03.04
POLICY

- a. Federal agencies cannot use appropriated funds to pay individual membership fees either directly or indirectly (e.g., where purchase of a society journal would confer membership status on an individual) to voluntary standards bodies (5 U.S.C. 5946).
- b. Administrative service fees may be paid by NBS organizational units if the payment of such fees is required by a voluntary standards body in order to serve on a committee(s) of that body and if the MOU Director or designee determines that service on that committee(s) is essential to the achievement of NBS goals and objectives. Contracts, agreements, and letters of intent relating to the payment of these fees must include the language given in Appendix A.

c. Payment of institutional membership fees must be approved by the NBS Director.

d. NBS employs a decentralized system for managing the participation of NBS representatives in external standards committee activities (see Subchapter 3.02). Participation is monitored by the Office of Product Standards Policy (120). Policy-level questions relating to NBS standards activities are reviewed by the Standardization Advisory and Coordination Committee.

3.03.05

RESPONSIBILITIES

- a. NBS Director - Approves the NBS institutional membership and initial

payment of fees to private voluntary standards bodies. Requests for approval of NBS institutional memberships and approval to pay institutional membership fees should be sent to the Director through the Chairperson of the NBS Standardization Advisory and Coordination Committee.

b. MOU Directors - Approve payment of administrative service fees to private voluntary standards bodies.

c. Center Directors - Annually review lists of staff participation in standards activities for appropriateness, indicating changes planned for the next calendar year.

d. Director, Office of Product Standards Policy - Maintains information on NBS staff participation in standards committees and activities in conjunction with operation of the NBS Standards Assistance and Management Information project; and provides current lists of NBS participants on standards committees to appropriate NBS organizational units for verification and review.

e. Standardization Advisory and Coordination Committee - May select policy-level issues relating to payment of fees to review or will consider such issues referred by the NBS Director, MOU Directors, or the Executive Board.

3.03.06

COLLECTION OF FEES

With the exceptions noted in the appendixes to this subchapter, organizational units are responsible for paying applicable fees for standards committee activities directly to the organizations concerned after obtaining all required approvals. Copies of all contracts, purchase orders, or other correspondence regarding payment of administrative service fees or institutional membership fees to standards bodies should be sent to the Director, Office of Product Standards Policy, who maintains records on NBS expenditures related to standards committee activities.

APPENDIX D

Excerpt from the Trade Agreements Act of 1979

- (1) the authority of the President to grant waivers under section 303 shall be effective on January 1, 1980; and
- (2) the authority of the President to grant waivers under section 301 shall be effective on January 1, 1981.

TITLE IV—TECHNICAL BARRIERS TO TRADE (STANDARDS)

Subtitle A—Obligations of the United States

SEC. 101. CERTAIN STANDARDS-RELATED ACTIVITIES.

Nothing in this title may be construed as prohibiting any private person, Federal agency, or State agency from engaging in standards-related activities that do not create unnecessary obstacles to the foreign commerce of the United States. No standards-related activity of any private person, Federal agency, or State agency shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic objective including, but not limited to, the protection of legitimate health or safety, essential security, environmental, or consumer interests and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

SEC. 402. FEDERAL STANDARDS-RELATED ACTIVITIES.

No Federal agency may engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States, including, but not limited to, standards-related activities that violate any of the following requirements:

- (1) **NONDISCRIMINATORY TREATMENT.**—Each Federal agency shall ensure, in applying standards-related activities with respect to any imported product, that such product is treated no less favorably than are like domestic or imported products, including, but not limited to, when applying tests or test methods, no less favorable treatment with respect to—
- (A) the acceptance of the product for testing in comparable situations;

(B) the administration of the tests in comparable situations;

(C) the fees charged for tests;

(D) the release of test results to the exporter, importer, or agents;

(E) the siting of testing facilities and the selection of samples for testing; and

(F) the treatment of confidential information pertaining to the product.

(2) USE OF INTERNATIONAL STANDARDS.—

(A) **IN GENERAL.**—Except as provided in subparagraph (B)(ii), each Federal agency, in developing standards, shall take into consideration international standards and shall, if appropriate, base the standards on international standards.

(B) **APPLICATION OF REQUIREMENT.**—For purposes of this paragraph, the following apply:

(i) **INTERNATIONAL STANDARDS NOT APPROPRIATE.**—The reasons for which the basing of a standard on an international standard may not be appropriate include, but are not limited to, the following:

(i) National security requirements.

(II) The prevention of deceptive practices.

(III) The protection of human health or safety, animal or plant life or health, or the environment.

(IV) Fundamental climatic or other geographical factors.

(V) Fundamental technological problems.

(ii) **REGIONAL STANDARDS.**—In developing standards, a Federal agency may, but is not required to, take into consideration any international standard promulgated by an international standards organization the membership of which is described in section 451(6)(A)(ii).

(3) **PERFORMANCE CRITERIA.**—Each Federal agency shall, if appropriate, develop standards based on performance criteria, such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to the physical form of the product or the types of material of which the product is made.

(4) **CERTIFICATION ACCESS FOR FOREIGN SUPPLIERS.**—Each Federal agency shall, with respect to any certification system used by it, permit access for obtaining certification under that system to foreign suppliers of a product on the same basis as access is permitted to suppliers of like products, whether of domestic or other foreign origin.

SEC. 403. STATE AND PRIVATE STANDARDS-RELATED ACTIVITIES.

19 USC 2533.

(a) **IN GENERAL.**—It is the sense of the Congress that no State agency and no private person should engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States.

(b) **PRESIDENTIAL ACTION.**—The President shall take such reasonable measures as may be available to promote the observance by State agencies and private persons, in carrying out standards-related activities, of requirements equivalent to those imposed on Federal agencies under section 402, and of procedures that provide for notification, participation, and publication with respect to such activities.

Subtitle B—Functions of Federal Agencies

SEC. 411. FUNCTIONS OF SPECIAL REPRESENTATIVE.

19 USC 2541.

(a) **IN GENERAL.**—The Special Representative shall coordinate the consideration of international trade policy issues that arise as a result of, and shall develop international trade policy as it relates to, the implementation of this title.

(b) **NEGOTIATING FUNCTIONS.**—The Special Representative has responsibility for coordinating United States discussions and negotiations with foreign countries for the purpose of establishing mutual arrangements with respect to standards-related activities. In carrying out this responsibility, the Special Representative shall inform and consult with any Federal agency having expertise in the matters under discussion and negotiation.

(c) **CROSS REFERENCE.**—

SEC. 412. ESTABLISHMENT AND OPERATION OF TECHNICAL OFFICES.

(a) ESTABLISHMENT.—

(1) FOR NONAGRICULTURAL PRODUCTS.—The Secretary of Commerce shall establish and maintain within the Department of Commerce a technical office that shall carry out the functions prescribed under subsection (b) with respect to nonagricultural products.

(2) FOR AGRICULTURAL PRODUCTS.—The Secretary of Agriculture shall establish and maintain within the Department of Agriculture a technical office that shall carry out the functions prescribed under subsection (b) with respect to agricultural products.

(b) FUNCTIONS OF OFFICES.—The President shall prescribe for each technical office established under subsection (a) such functions as the President deems necessary or appropriate to implement this title.

SEC. 413. REPRESENTATION OF UNITED STATES INTERESTS BEFORE INTERNATIONAL STANDARDS ORGANIZATIONS.

(a) OVERSIGHT AND CONSULTATION.—The Secretary concerned shall—

(1) inform, and consult and coordinate with, the Special Representative with respect to international standards-related activities identified under paragraph (2);

(2) keep adequately informed regarding international standards-related activities and identify those that may substantially affect the commerce of the United States; and

(3) carry out such functions as are required under subsections (b) and (c).

(b) REPRESENTATION OF UNITED STATES INTERESTS BY PRIVATE PERSONS.—

(1) DEFINITIONS.—For purposes of this subsection—

(A) ORGANIZATION MEMBER.—The term “organization member” means the private person who holds membership in a private international standards organization.

(B) PRIVATE INTERNATIONAL STANDARDS ORGANIZATION.—The term “private international standards organization” means any international standards organization before which the interests of the United States are represented by a private person who is officially recognized by that organization for such purpose.

(2) IN GENERAL.—Except as otherwise provided for in this subsection, the representation of United States interests before any private international standards organization shall be carried out by the organization member.

(3) INADEQUATE REPRESENTATION.—If the Secretary concerned, after inquiry instituted on his own motion or at the request of any private person, Federal agency, or State agency having an interest therein, has reason to believe that the participation by the organization member in the proceedings of a private international standards organization will not result in the adequate representation of United States interests that are, or may be, affected by the activities of such organization (particularly with regard to the potential impact of any such activity on the international trade of the United States), the Secretary concerned shall immediately notify the organization member con-

cerned. During any such inquiry, the Secretary concerned shall solicit and consider the advice of the appropriate representative referred to in section 417.

(4) ACTION BY ORGANIZATION MEMBER.—If within the 90-day period after the date on which notification is received under paragraph (3) (or such shorter period as the Secretary concerned determines to be necessary in extraordinary circumstances), the organization member demonstrates to the Secretary concerned its willingness and ability to represent adequately United States interests before the private international standards organization, the Secretary concerned shall take no further action under this subsection.

(5) ACTION BY SECRETARY CONCERNED.—If—

(A) within the appropriate period referred to in paragraph (4), the organization member does not respond to the Secretary concerned with respect to the notification, or does respond but does not demonstrate to the Secretary concerned the requisite willingness and ability to represent adequately United States interests; or

(B) there is no organization member of the private international standards organization;

the Secretary concerned shall make appropriate arrangements to provide for the adequate representation of United States interests. In cases where subparagraph (A) applies, such provision shall be made by the Secretary concerned through the appropriate organization member if the private international standards organization involved requires representation by that member.

(c) REPRESENTATION OF UNITED STATES INTERESTS BY FEDERAL AGENCIES.—With respect to any international standards organization before which the interests of the United States are represented by one or more Federal agencies that are officially recognized by that organization for such purpose, the Secretary concerned shall—

(1) encourage cooperation among interested Federal agencies with a view toward facilitating the development of a uniform position with respect to the technical activities with which the organization is concerned;

(2) encourage such Federal agencies to seek information from, and to cooperate with, the affected domestic interests when undertaking such representation; and

(3) not preempt the responsibilities of any Federal agency that has jurisdiction with respect to the activities undertaken by such organization, unless requested to do so by such agency.

SEC. 414. STANDARDS INFORMATION CENTER.

(a) ESTABLISHMENT.—The Secretary of Commerce shall maintain within the Department of Commerce a standards information center.

(b) FUNCTIONS.—The standards information center shall—

(1) serve as the central national collection facility for information relating to standards, certification systems, and standards-related activities, whether such standards, systems, or activities are public or private, domestic or foreign, or international, regional, national, or local;

(2) make available to the public at such reasonable fee as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) other than information to which paragraph (3) applies;

(3) use its best efforts to make available to the public, at such reasonable fees as the Secretary shall prescribe, copies of information required to be collected under paragraph (1) that is of private origin, on a cooperative basis with the private individual or entity, foreign or domestic, who holds the copyright on the information;

(4) in case of such information that is of foreign origin, provide, at such reasonable fee as the Secretary shall prescribe, such translation services as may be necessary;

(5) serve as the inquiry point for requests for information regarding standards-related activities, whether adopted or proposed, within the United States, except that in carrying out this paragraph, the Secretary of Commerce shall refer all inquiries regarding agricultural products to the technical office established under section 412(a)(2) within the Department of Agriculture; and

(6) provide such other services as may be appropriate, including but not limited to, such services to the technical offices established under section 412 as may be requested by those offices in carrying out their functions.

SEC. 415. CONTRACTS AND GRANTS.

(a) **IN GENERAL.**—For purposes of carrying out this title, and otherwise encouraging compliance with the Agreement, the Special Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make grants to, or enter into contracts with, any other Federal agency, any State agency, or any private person, to assist such agency or person to implement appropriate programs and activities, including, but not limited to, programs and activities—

(1) to increase awareness of proposed and adopted standards-related activities;

(2) to facilitate international trade through the appropriate international and domestic standards-related activities;

(3) to provide, if appropriate, and pursuant to section 413, adequate United States representation in international standards-related activities; and

(4) to encourage United States exports through increased awareness of foreign standards-related activities that may affect United States exports.

No contract entered into under this section shall be effective except to such extent, and in such amount, as is provided in advance in appropriation Acts.

(b) **TERMS AND CONDITIONS.**—Any contract entered into, or any grant made, under subsection (a) shall be subject to such terms and conditions as the Special Representative or Secretary concerned shall by regulation prescribe as being necessary or appropriate to protect the interests of the United States.

(c) **LIMITATIONS.**—Financial assistance extended under this section shall not exceed 75 percent of the total costs (as established by the Special Representative or Secretary concerned, as the case may be) of the program or activity for which assistance is made available. The non-Federal share of such costs shall be made in cash or kind, consistent with the maintenance of the program or activity concerned.

(d) **AUDIT.**—Each recipient of a grant or contract under this section shall make available to the Special Representative or the Secretary concerned, as the case may be, and to the Comptroller General of the

United States, for purposes of audit and examination, any book, document, paper, and record that is pertinent to the funds received under such grant or contract.

SEC. 416. TECHNICAL ASSISTANCE.

The Special Representative and the Secretary concerned may each, with respect to functions for which responsible under this title, make available, on a reimbursable basis or otherwise, to any other Federal agency, State agency, or private person such assistance, including, but not limited to, employees, services, and facilities, as may be appropriate to assist such agency or person in carrying out standards-related activities in a manner consistent with this title.

SEC. 417. CONSULTATIONS WITH REPRESENTATIVES OF DOMESTIC INTERESTS.

In carrying out the functions for which responsible under this title, the Special Representative and the Secretary concerned shall solicit technical and policy advice from the committees, established under section 135 of the Trade Act of 1974 (19 U.S.C. 2155), that represent the interests concerned, and may solicit advice from appropriate State agencies and private persons.

Subtitle C—Administrative and Judicial Proceedings Regarding Standards-Related Activities

CHAPTER 1—REPRESENTATIONS ALLEGING UNITED STATES VIOLATIONS OF OBLIGATIONS

SEC. 421. RIGHT OF ACTION UNDER THIS CHAPTER.

Except as provided under this chapter, the provisions of this subtitle do not create any right of action under the laws of the United States with respect to allegations that any standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement.

SEC. 422. REPRESENTATIONS.

Any—

(1) Party to the Agreement; or

(2) foreign country that is not a Party to the Agreement but is found by the Special Representative to extend rights and privileges to the United States that are substantially the same as those that would be so extended if that foreign country were a Party to the Agreement;

may make a representation to the Special Representative alleging that a standards-related activity engaged in within the United States violates the obligations of the United States under the Agreement. Any such representation must be made in accordance with procedures that the Special Representative shall by regulation prescribe and must provide a reasonable indication that the standards-related activity concerned is having a significant trade effect. No person other than a Party to the Agreement or a foreign country described in paragraph (2) may make such a representation.

SEC. 423. ACTION AFTER RECEIPT OF REPRESENTATIONS.

(a) **REVIEW.**—Upon receipt of any representation made under section 422, the Special Representative shall review the issues concerned in consultation with—

SEC. 451. DEFINITIONS.

As used in this title—

(1) **AGREEMENT.**—The term “Agreement” means the Agreement on Technical Barriers to Trade approved under section 2(a) of this Act.

(2) **CERTIFICATION SYSTEM.**—The term “certification system” means a system—

- (A) for determining whether a product conforms with product standards applicable to that product; and
- (B) if a product so conforms, for attesting, by means of a document, mark, or other appropriate evidence of conformity, to that conformity.

Such term also includes any modification of, or change to, any such system.

(3) **FEDERAL AGENCY.**—The term “Federal agency” means any of the following within the meaning of chapter 2 of part 1 of title 5, United States Code:

- (A) Any executive department.
- (B) Any military department.
- (C) Any Government corporation.
- (D) Any Government-controlled corporation.
- (E) Any independent establishment.

(4) **INTERNATIONAL CERTIFICATION SYSTEM.**—The term “international certification system” means a certification system that is adopted by an international standards organization.

(5) **INTERNATIONAL STANDARD.**—The term “international standard” means any standard that is promulgated by an international standards organization.

(6) **INTERNATIONAL STANDARDS ORGANIZATION.**—The term “international standards organization” means any organization—

- (A) the membership of which is open to representatives, whether public or private, of the United States and—
 - (i) all Parties to the Agreement, or
 - (ii) some but not all Parties of the Agreement; and
- (B) that is engaged in international standards-related activities.

(7) **INTERNATIONAL STANDARDS-RELATED ACTIVITY.**—The term “international standards-related activity” means the negotiation, development, or promulgation of, or any amendment or change to, an international standard, or an international certification system, or both.

(8) **PARTY TO THE AGREEMENT.**—The term “Party to the Agreement” means any foreign country or instrumentality determined by the President to have assumed, and to be applying, the obligations of the Agreement with respect to the United States.

(9) **PRIVATE PERSON.**—The term “private person” means—

- (A) any individual who is a citizen or national of the United States; and
- (B) any corporation, partnership, association, or other legal entity organized or existing under the law of any State, whether for profit or not for profit.

(10) **PRODUCT.**—The term “product” means any natural or manufactured item.

(11) **SECRETARY CONCERNED.**—The term “Secretary concerned” means the Secretary of Commerce with respect to functions under this title relating to nonagricultural products, and the

- (1) the agency or person alleged to be engaging in violations under the Agreement;
- (2) the member agencies of the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a));
- (3) other appropriate Federal agencies; and
- (4) appropriate representatives referred to in section 417.

(b) **RESOLUTION.**—The Special Representative shall undertake to resolve, on a mutually satisfactory basis, the issues set forth in the representation through consultation with the parties concerned.

SEC. 424. PROCEDURE AFTER FINDING BY INTERNATIONAL FORUM.

(a) **IN GENERAL.**—If an appropriate international forum finds that a standards-related activity being engaged in within the United States conflicts with the obligations of the United States under the Agreement, the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962 (19 U.S.C. 1872(a)) shall review the finding and the matters related thereto with a view to recommending appropriate action.

(b) **CROSS REFERENCE.**—

For provisions of law regarding remedies available to domestic persons alleging that standards activities engaged in by Parties to the Agreement (other than the United States) violate the obligations of the Agreement, see section 301 of the Trade Act of 1974 (19 U.S.C. 2111).

CHAPTER 2—OTHER PROCEEDINGS REGARDING CERTAIN STANDARDS-RELATED ACTIVITIES

SEC. 411. FINDINGS OF RECIPROCITY REQUIRED IN ADMINISTRATIVE PROCEEDINGS.

(a) **IN GENERAL.**—Except as provided under chapter 1, no Federal agency may consider a complaint or petition against any standards-related activity regarding an imported product, if that activity is engaged in within the United States and is covered by the Agreement, unless the Special Representative finds, and informs the agency concerned in writing, that—

- (1) the country of origin of the imported product is a Party to the Agreement or a foreign country described in section 422(2); and
- (2) the dispute settlement procedures provided under the Agreement are not appropriate.

(b) **EXEMPTIONS.**—This section does not apply with respect to causes of action arising under—

- (1) the antitrust laws as defined in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)); or
- (2) statutes administered by the Secretary of Agriculture.

This section does not apply with respect to petitions and proceedings that are provided for under the practices of any Federal agency for the purpose of ensuring, in accordance with section 553 of title 5, United States Code, that interested persons are given an opportunity to participate in agency rulemaking or to seek the issuance, amendment, or repeal of a rule.

SEC. 412. NOT CAUSE FOR STAY IN CERTAIN CIRCUMSTANCES.

No standards-related activity being engaged in within the United States may be stayed in any judicial or administrative proceeding on the basis that such activity is currently being considered, pursuant to the Agreement, by an international forum.

Secretary of Agriculture with respect to functions under this title relating to agricultural products.

(12) **SPECIAL REPRESENTATIVE.**—The term "Special Representative" means the Special Representative for Trade Negotiations.

(13) **STANDARD.**—The term "standard" means any of the following, and any amendment or change to any of the following: (A) The specification of the characteristics of a product, including, but not limited to, levels of quality, performance, safety, or dimensions.

(B) Specifications relating to the terminology, symbols, testing and test methods, packaging, or marking or labeling requirements applicable to a product.

(C) Administrative procedures related to the application of any specification referred to in paragraph (A) or (B).

(14) **STANDARDS-RELATED ACTIVITY.**—The term "standards-related activity" means the development, adoption, or application of any standard or any certification system.

(15) **STATE.**—The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam and any other Commonwealth, territory, or possession of the United States.

(16) **STATE AGENCY.**—The term "State agency" means any department, agency, or other instrumentality of the government of any State or of any political subdivision of any State.

(17) **UNITED STATES.**—The term "United States", when used in a geographical context, means all States.

SEC. 452. EXEMPTIONS UNDER TITLE.

This title does not apply to—

(1) any standards activity engaged in by any Federal agency or State agency for the use (including, but not limited to, use with respect to research and development, production, or consumption) of that agency or the use of another such agency; or

(2) any standards activity engaged in by any private person solely for use in the production or consumption of products by that person.

SEC. 453. REPORTS TO CONGRESS ON OPERATION OF AGREEMENT.

As soon as practicable after the close of the 3-year period beginning on the date on which this title takes effect, and as soon as practicable after the close of each succeeding 3-year period, the Special Representative shall prepare and submit to Congress a report containing an evaluation of the operation of the Agreement, both domestically and internationally, during the period.

SEC. 454. EFFECTIVE DATE.

This title shall take effect on January 1, 1980, if the Agreement enters into force with respect to the United States by that date.

TITLE V—IMPLEMENTATION OF CERTAIN TARIFF NEGOTIATIONS

SEC. 501. AMENDMENT OF TARIFF SCHEDULES.

Whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a schedule or other provision, the reference shall be considered to be made to a schedule or other provision of the Tariff Schedules of the United States (19 U.S.C. 1202).

SEC. 502. EFFECTIVE DATES OF CERTAIN TARIFF REDUCTIONS.

(a) **GENERAL.**—If the President determines that appropriate concessions have been received from foreign countries under trade agreements entered into before January 3, 1980, under title I of the Trade Act of 1974, then the amendments to the Tariff Schedules of the United States under sections 505, 506, 508, 509, 510, 511, 512, and 513 shall be effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after the date proclaimed by the President.

(b) **TERMINATION OR WITHDRAWAL.**—For purposes of section 125 (19 U.S.C. 2135) of the Trade Act of 1974 the amendments made under sections 508, 511, 512, and 513 not including the rates of duty appearing in rate column numbered 2, if any, shall be considered to be trade agreement obligations entered into under the Trade Act of 1974, of benefit to foreign countries or instrumentalities.

(c) **TARIFF REDUCTIONS.**—For purposes of sections 101 and 601(7) of the Trade Act of 1974 (19 U.S.C. 2111, 2481), the rates of duty in the rate column numbered 1 or 2 as the result of the amendments, if any, made under sections 505, 506, 509, 510, 511, and 514 shall be considered to be the rates of duty existing or in effect on January 1, 1975.

(d) **IN GENERAL.**—The aggregate reduction in the rate of duty applicable to items described in this subsection in effect on any day pursuant to a trade agreement entered into under section 101 of the Trade Act of 1974 before January 3, 1980, may exceed the limitation in section 109(a) of such Act (19 U.S.C. 2119):

(1) Items amended under section 223(d) of this Act to the extent that they apply to articles which the President determines were not imported into the United States before January 1, 1978, and were not produced in the United States before May 1, 1978.

(2)(A) Items to the extent that they apply to articles which the President determines are not import sensitive and are the product of a least developed developing country as defined in the United Nations General Assembly list of "Least Developed Countries" and which are beneficiary developing countries under section 502 of the Trade Act of 1974.

(B) The President may at any time suspend the treatment accorded under subparagraph (A) in which case the aggregate reduction in effect for such products shall be the reduction in effect for countries other than least developed developing countries.

(3) Item 628.57. Notwithstanding the first sentence of this subsection, the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit an aggregate reduction of 4.8 percent ad valorem in the rate of duty in effect under such item during the first 1-year period after the effective date of the first reduction in the rate of duty proclaimed for such item.

(4) Items 132.50, 170.10, 170.15, 170.20, 177.62, 186.15, and 429.47.

(5) Items 306.31, 306.32, 306.33, and 306.34. Notwithstanding subsection (a), the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit the total reduction proclaimed under section 101 of the Trade Act of 1974 relating to such item to take effect within 2 years after the

SEC. 503. STAGING OF CERTAIN TARIFF REDUCTIONS.

(a) **IN GENERAL.**—The aggregate reduction in the rate of duty applicable to items described in this subsection in effect on any day pursuant to a trade agreement entered into under section 101 of the Trade Act of 1974 before January 3, 1980, may exceed the limitation in section 109(a) of such Act (19 U.S.C. 2119):

(1) Items amended under section 223(d) of this Act to the extent that they apply to articles which the President determines were not imported into the United States before January 1, 1978, and were not produced in the United States before May 1, 1978.

(2)(A) Items to the extent that they apply to articles which the President determines are not import sensitive and are the product of a least developed developing country as defined in the United Nations General Assembly list of "Least Developed Countries" and which are beneficiary developing countries under section 502 of the Trade Act of 1974.

(B) The President may at any time suspend the treatment accorded under subparagraph (A) in which case the aggregate reduction in effect for such products shall be the reduction in effect for countries other than least developed developing countries.

(3) Item 628.57. Notwithstanding the first sentence of this subsection, the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit an aggregate reduction of 4.8 percent ad valorem in the rate of duty in effect under such item during the first 1-year period after the effective date of the first reduction in the rate of duty proclaimed for such item.

(4) Items 132.50, 170.10, 170.15, 170.20, 177.62, 186.15, and 429.47.

(5) Items 306.31, 306.32, 306.33, and 306.34. Notwithstanding subsection (a), the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit the total reduction proclaimed under section 101 of the Trade Act of 1974 relating to such item to take effect within 2 years after the

APPENDIX E

Federal Register - February 15, 1984

"Guidelines for Participation by U.S. Government Agencies, Employees or
Representatives in International Standards-Related Activities"

Federal Register

Wednesday
February 15, 1984

Notice

National Bureau of Standards

Guideline Documents Implementing Federal Standards Policy

AGENCY: National Bureau of Standards,
Commerce.

ACTION: Notice of Guideline Documents
Implementing Federal Standards Policy.

SUMMARY: The purpose of this notice is to announce the approval by the Secretary of Commerce of three guideline documents that have been developed by the Interagency Committee on Standards Policy. These documents implement various aspects of the Federal Standards Policy as set out in Office of Management and Budget (OMB) Circular A-119, dated October 26, 1982.

The Interagency Committee on Standards Policy (ICSP) was established by the Secretary of Commerce under Section 8.a.(2) of OMB Circular A-119. The three guidance documents developed by the ICSP are set out in their entirety at the conclusion of this notice.

The first document establishes "Guidelines for Participation by U.S. Government Agencies, Employees or

Representatives in International Standards-Related Activities." Section 1 of this document applies to participation in international organizations in which the U.S. Government is the official U.S. member body. Section 2 of this document applies to participation in international organizations in which the U.S. Government is not the official U.S. member body.

The second document establishes "Guidelines for Federal Agency Use of Private Sector Third-Party Certification Programs." The third document provides "Guidelines for Federal Agency Use of Self Certification by Producer or Supplier." These latter two documents are generally applicable to agency procurement and regulatory programs that require statements of conformance to specific standards or specifications.

Comments and questions concerning these guidelines should be directed to Dr. Stanley I. Warshaw, Director, Office of Product Standards Policy, National Bureau of Standards, Washington, D.C. 20234, (301-921-3751). Dr. Warshaw is the Chairman of the Interagency Committee on Standards Policy.

Dated: February 9, 1984.

Ernest Ambler,

Director, National Bureau of Standards.

Guidelines for Participation by U.S. Government Agencies, Employees, or Representatives in International Standards-Related Activities

Introduction

The important role that standards-related activities have played throughout the whole fabric of national and international economic activities has received increased recognition in recent years. Standards have consolidated and extended the application of technology, helped to conserve scarce resources, improved industrial efficiency, enhanced the general welfare of the public, promoted commerce, and generally improved communication and understanding among the drafters and users of standards. In particular, governments have been giving more attention to the part played by standards as technical barriers to trade. If improperly conducted, international standards activities can suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect domestic and international commerce.

The role and functions of U.S. Government agencies, employees, and representatives in international

standards-related activities have not been clearly defined. Consequently, the interpretation of that role has varied among Federal agencies, the private sector, and foreign countries. Other factors have also prompted the need to establish uniform Federal guidelines in the international standards area, notably:

1. The increasing tendency of governments to regulate or procure by "reference to standards";
2. The growing impact of national standards upon domestic and international commerce;
3. Current international activity aimed at preventing barriers to trade that arise from differing national mandatory and voluntary standards, including heightened interest in the development of international standards and their subsequent national adoption; and
4. An expressed desire by several U.S. Government agencies for such guidelines.

A recent U.S. development covering the subject of standardization gives further impetus for the development of guidelines covering Federal participation in international standardization activities:

- Trade Agreements Act of 1979, Title IV—Technical Barriers to Trade (Standards), effective January 1, 1980. Section 413 of that Act deals specifically with representation of U.S. interests before international standards organizations. Regarding private international organizations, this section recognizes the role of U.S. private sector members of such organizations and grants the Secretaries of Commerce and Agriculture authority, under certain circumstances, to provide for adequate U.S. representation in those private international standards organizations through the U.S. member bodies. Regarding representation of U.S. interests by Federal agencies, Section 413(c) encourages cooperation among Federal agencies regarding the development of uniform positions, and encourages such Federal agencies to seek information from and to cooperate with domestic U.S. interests. Paragraph 2.3 of the international Standards Agreement itself calls upon parties (e.g., the U.S. Government) to "play a full part within the limits of their resources in the preparation by appropriate international standardizing bodies of international standards for products for which they have either adopted, or expect to adopt, technical regulations or standards."

The recent and rapid expansion of international cooperation in trade and defense emphasizes the need for

effective government involvement in the development of acceptable international standards (including test methods and certification) and requires that the limited U.S. Government resources contributing to such standards be expended effectively through efficient Government representation in and coordination with international standards organizations. These guidelines provide direction for strengthening such efficiency and effectiveness. Accordingly, the aim of this document is to provide guidance to U.S. Government agencies, employees, and representatives who participate in:

(a) International organizations in which the U.S. Government is the official U.S. member body (commonly called intergovernmental organizations), e.g., International Organization of Legal Metrology (OIML).

(b) International organizations in which the U.S. Government is not the official U.S. member body and where the United States is represented by a domestic private sector organization that is recognized by a private international organization as the U.S. member body, e.g., International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC), where the U.S. member body is the American National Standards Institute (ANSI).

Although the two types of organizations are treated separately in these guidelines, such guidelines are uniform by being applicable to both types to the maximum extent possible.

These guidelines cover not only Federal participation in international conferences and meetings, but also participation in the development of U.S. positions in preparation for these conferences and meetings.

The application of these guidelines will vary from time to time and from committee to committee according to the end-use of a standard. Much will depend on whether the international standard under development is to be considered for reference in regulations and, if so, whether compliance with its provisions is likely to be mandatory, and whether there are relevant existing or proposed national or international requirements. These and similar considerations will influence the role of the U.S. Government representatives participating in standards-developing groups. This document is intended to help such representatives discharge their responsibilities while promoting the development of reasonable and effective international standards.

It should be noted that individual U.S. Government departments may, in order to cover special interests, issue supplementary instructions to their representatives. Where possible, these instructions should be compatible with the principles contained in these guidelines. Attached to these guidelines is a list of Federal agency contact points on international standardization.

Glossary

Accredited—Official authorization to serve as a member of a delegation to an international standards-related activity.

Delegation—Representatives of a nation or member-body empowered to act at an international standards-related meeting.

Delegate—An accredited member of a delegation.

Head of Delegation—The person responsible for guiding the delegation at the international meeting and presenting the U.S. position.

Representative—An individual designated by a Federal agency as its official participant in international standards-related activities and/or development of U.S. positions thereon.

Principal Representative—The Federal representative designated to act as the primary U.S. Government spokesperson and coordinator when two or more Federal agencies participate in an international standards-related activity. The principal representative may function also as head of the delegation.

International Standards or Standards-Related Activities or Organizations—Includes standards, testing, and certification.

Lead Agency—A Federal agency which assumes responsibility for effective U.S. Federal representation in the International standards-related matter concerned.

Technical Offices

Department of Commerce

Technical Office for Implementation of Title IV of Trade Agreements Act/1979: Office of Product Standards Policy, National Bureau of Standards, U.S. Department of Commerce, Washington, D.C. 20234.

Department of Agriculture

Technical Office, Trade Relations Division, International Trade Policy, Foreign Agricultural Service, U.S. Department of Agriculture, South Agriculture Building, Washington, D.C. 20250.

Section I—Guidelines for Participation by U.S. Government Agencies, Employees, or Representatives in International Standard-Related Organizations in Which the U.S. Government is the Official U.S. Member Body

Subsection A. Delegation Accredited by U.S. Department of State

1. **Scope.** Subsection A applies only to international conferences, which are defined as meetings of three or more governments whose representatives are formally accredited by their governments to the sponsoring international organizations or host government. When this is the case, the U.S. delegation represents the U.S. Government as a whole. Such meetings may result in a formal commitment(s) by the U.S. Government of a policy nature. Subsection A does *not* apply to bilateral discussions or meetings of subsidiary international bodies which are intended to produce only recommendations to a higher authority of the organization concerned, and whose subject-matter is predominantly technical (in contrast to policy). The final arbiter as to whether or not a particular meeting meets the definition of an international conference (i.e., whether it falls under Subsection A or Subsection B) rests with the Office of International Conferences, U.S. Department of State.

2. **Lead Agency.** The U.S. Federal agency having primary responsibility or authority for the subject matter of the meeting normally is designated by the Department of State as lead agency. In cases where such primacy is not clear or is in dispute, the Department of State determines the lead agency. The lead agency should assume responsibility for U.S. preparations to the conference, assure that nominations for the delegation reach the Office of International Conferences in a timely fashion, and take responsibility for the effective representation of U.S. interests in the matter concerned.

3. **Nomination and Accreditation of Delegation.** The delegation should be proposed to the Office of International Conferences (OIC), U.S. Department of State by the lead agency or by an Interagency committee headed by the lead agency. The Office (OIC) recognizes that particularly in standards matters and effective representation therein, experience and continuity of participation are important considerations in the composition of delegations. Each person proposed for delegation membership including the U.S. representative (head of delegation), alternate, government advisors, and private sector advisors, as appropriate,

will be justified on the basis of his or her essentiality to the work of the delegation. Because the delegation will represent the United States Government as a whole and will be instructed on U.S. positions on all major points, each interested agency need not have a representative on the delegation. OIC exercises delegated Presidential authority in accrediting U.S. delegations. Final decisions on the size and make-up of delegations including the resolution of any interagency differences thereon will be made by OIC.

4. **Development of U.S. Positions.** It is the responsibility of the lead agency to insure that a position paper is drafted on each relevant agenda item and that these papers are properly coordinated and cleared. In the discretion of the lead agency, U.S. positions may also be drafted on points which do not appear on the official agenda.

5. **Coordination Outside of Government.** The lead agency should seek the advice of person and organizations outside the U.S. Government whose interests may be materially affected by the subject-matter of the conference, especially U.S. trade interests. Such advice should be solicited in writing or through meetings prior to the development of the U.S. position.

6. **Intra-government Coordination.** It is the responsibility of the lead agency to insure that all interested government departments and agencies have the opportunity to review proposed U.S. positions and to resolve any differences which may occur prior to the international conference. It is the responsibility of the head of the delegation to insure that all members of the delegation are fully acquainted with the U.S. position and that they maintain necessary conformity therewith regardless of differences which may have existed previously.

7. **Report of Delegation.** The head of the delegation is responsible for preparing and submitting to OIC a final report on the meeting in accordance with instructions from OIC. That report should be made available by the head of the delegation to all members of the delegation and, if unclassified, to any interested party. Wherever possible, reports should be unclassified. Where security classification is necessary, only that portion of the report which merits classification should be so classified and indicated as such (see Executive Order 12356). When international trade is involved, the head of the delegation should transmit a copy of the report promptly to appropriate agencies and organizations, including the Department

of Commerce's Technical Office for implementation of Title IV of the Trade Agreements Act of 1979 on matters relating to non-agriculture products, and to the Department of Agriculture's Technical Office for implementation of Title IV on matters concerning agricultural products. Recommended contents of the report are:

- a. Results of meeting in terms of U.S. objectives, including issues which were discussed but which did not appear on the agenda, if any;
- b. Matters for further U.S. action or consideration, especially significant problem areas which may affect U.S. trade;
- c. Information on future meeting(s), if available; and
- d. Implications, if any, for U.S. export prospects and for competition in domestic markets.

Subsection B. Delegations Not Accredited by U.S. Department of State

1. *Scope.* These guidelines apply to all participation by U.S. delegations in standards-related meetings of international organizations in which the U.S. Government is the official U.S. member body, *except* those in which the U.S. Department of State accredits the U.S. delegation, in which case Subsection A shall apply.

2. *Lead Agency.* The Federal agency having primary responsibility for U.S. participation in the international organization under whose auspices the meeting is to be held is responsible for assuring adequate U.S. participation at the meeting. In the case of planned meetings (e.g., topical conferences, symposia) which are not under the auspices of a single international organization, the U.S. Government agencies having interests in the subject matter should cooperate in deciding which will act as lead agency. The lead agency should inform the relevant "Technical Office" of the Department of Commerce or Agriculture, as appropriate, of standards meetings whose outcome may affect U.S. trade.

3. *Meeting Preparations.* The lead agency is responsible for coordinating the many details involved in preparing for U.S. participation in international standards-related meetings. It is incumbent on the lead agency to take all reasonable steps to: assure adequate funding of the U.S. delegation; obtain necessary clearances (travel or otherwise); and, instruct the delegation in its responsibilities and duties.

3.1 *Formation of Delegation.* The lead agency is normally responsible for formation of the delegation and for the specific assignments of work to the delegation. In carrying out these

responsibilities the following points should be taken into consideration:

3.1.1 *Size of Delegation.* The lead agency should use sufficiently selective criteria to ensure that the size of the delegation is justifiable in terms of the importance of the meeting to U.S. national interests.

3.1.2 *Balanced Representation.* The composition of the delegation requires careful consideration and planning. In selecting the delegation, the lead agency should take into consideration: The nature and purpose of the meeting; the possible impact of the meeting's results; the use of qualified women and minorities; and, the interests of all parties that may be substantially affected within the United States. In those cases where the meeting may result in technical requirements or standards which may measurably affect trade, or which may be adopted as law or regulation within the United States, it is particularly important to seek representation on the delegation from the affected community (e.g., industry, other Federal agencies, State and local governments, labor, universities, consuming public). The lead agency may find that, while there is interest in participation in the delegation by such groups, they may lack the necessary funds to do so (particularly to pay for international travel). In such cases a balanced U.S. viewpoint can often still be achieved by having all interested parties participate in preparatory meetings held to review, comment on, and agree on positions to be taken by the delegation during the international meeting.

3.1.3 *Head of Delegation.* In making its selection the lead agency should appoint as head of delegation an able negotiator who is: Experienced in the subject matter of the meeting; familiar with the policies and procedures of the international organization sponsoring the meeting; and, capable of maintaining harmony within the delegation.

3.1.4 *Accreditation of Delegation.* Once the composition of the U.S. delegation has been decided, the lead agency is responsible for satisfying any requirements imposed by the relevant international organization as regards accrediting or advanced notice of delegations. Generally, sponsors of international intergovernmental meetings request advance notification of participation. Every effort should be made by the lead agency to respect such requests in a timely fashion. Often, a simple letter of appointment to each delegate serves many useful purposes even when not required. For example, a letter of appointment is often useful in

justifying participation in a standards meeting to higher management.

3.1.5 *Continuity of Delegation.* In recognizing that the effectiveness of a delegation is enhanced by the long-term continuity of participation by particular delegates, the lead agency should endeavor to provide and maintain that continuity.

3.2 *Preparation of Position Papers.* While it is advantageous to prepare position papers in advance of the meeting, there are many instances when advanced preparation of position papers is not practical because of the technical nature of the meeting, insufficient information as to the exact agenda to be discussed, or insufficient time. Consideration should be given to the nature, purpose, and status of the meeting in determining the need for position papers. For example, there are many meetings of a technical nature where delegates participate as experts under the rules of the organization and are free to take positions without committing their governments to a particular course of action. Delegates to such meetings should be prepared to take positions which have been coordinated with appropriate U.S. interests, although it may not have been possible to prepare position papers concerning the points involved. Further, technical discussions, particularly in the early stages of standards development, are free-wheeling and delegations should have the latitude to freely debate technical issues. In the standardization process, there are normally a number of iterations of a draft standard as it moves through the system. Position papers may, therefore, be more appropriate in guiding the delegation in later stages of standards development when delegations are expected to vote on adoption of the standard. It is sometimes also useful to prepare position papers for items not on the official meeting agenda but which are deemed likely to arise or otherwise be relevant to U.S. interests. In any case, the lead agency and the head of delegation should determine whether position papers are appropriate. When they are, the following guidelines should be followed.

3.2.1 *Unresolved Issues.* The head of delegation, with assistance as appropriate from the lead agency, should be responsible for the preparation of position papers. If agreement on a U.S. position on all major issues cannot be reached, the head of delegation should elevate any unresolved issue to the lead agency for resolution, in consultation with affected

interests (other agencies, private sector, etc.) where possible and practical.

3.2.2 Clearance of Position Papers. The head of delegation in cooperation with the lead agency should determine on a case-by-case basis what clearances of position papers, if any, are appropriate. With lead agency assistance, the head of delegation should also be responsible for obtaining such clearances.

3.3 Coordination With Affected Interests. Ensuring that affected U.S. interests have been taken into account in the preparation for the international meeting is perhaps the most difficult and yet most important responsibility of the lead agency and head of delegation. For obvious reasons of time and resources, there must be limits to the effort of coordinating positions. Accordingly, the lead agency and head of delegation should decide what actions need to be taken. If the meeting involves the development of technical standards which may become that basis for the conduct of international trade or of law or regulation in this country or in other countries, U.S. interests which may be materially affected by these standards should be notified of the meeting and provided with relevant information and the opportunity to comment on proposed positions. This may be accomplished in any feasible manner, including the solicitation of written comments or a meeting. The lead agency and head of delegation should be particularly aware of international standards activities which may overlap or duplicate ongoing activities either in other international organizations (intergovernmental or voluntary) in which the U.S. is a member, or within U.S. standards bodies, and should wherever possible take steps to reduce the possibility of duplication of effort.

3.4 Prevention of Trade Barriers. Government agencies and employees should be mindful that a standard may, if improperly written, create an unnecessary barrier to trade. Likewise, they should also be aware that some standards may be written in such a way as to impede innovation and technological progress and should strive to provide standards that promote innovative processes and technological advances when they are in the public interest. In general, standards based on performance criteria are less likely to pose competitive concerns than design, material, or construction criteria. Accordingly, preference should be given to performance criterion whenever they reasonably may be used in lieu of design, material, or construction criterion.

3.4.1 While a standard may include a product incorporating a device or process which is patented, it is undesirable for a standard to be written in such a way as to require the use of the patented device or process in order to be in conformance with the standard. Normally this problem can be avoided by writing standards based on performance criteria rather than design, materials, or construction criteria. There may be occasions, however, where there is a great need for a particular standard to be written to specify a patented item. Most standards organizations have patent policies which require that if an item which is patented is included in a standard, the owner of a patent must declare that the patent is available for unrestricted licensing under reasonable terms and conditions. Government participants should familiarize themselves with the patent policies of the organizations in which they are participating, and discuss them with their agency counsel should there be any questions.

3.5. Technical Quality of Standards. It is particularly important that a standard under development is technically sound, within the operating scope of the organization and meets defined needs of the member nations. This may require that the Government representative consult with other Government experts or with persons in other organizations who are not directly involved with the standard under consideration. Where a standard does not meet a particular set of needs or is not technically sound in the view of the Government participant, he/she should work with the committee to make the necessary corrections. If unsuccessful, the participant should oppose the adoption of the standard and report such action to agency management.

4. Meeting Participation. To be effective at international standards-related meetings, a U.S. delegation has to be prepared not only for the substance of the meeting, but also for possible side issues and actions that can have a significant impact on the success of the delegation. Instructions to a delegation include information on how to cope with unforeseen matters or with extraneous political issues that might arise during the meeting, and should stress the importance of team work and the need for the delegation to be constantly aware that their actions, in and outside of the meeting, should reflect credit upon the United States.

4.1 Responsibilities of the Delegation. Delegates shall at all times maintain the highest standards of personal and professional conduct.

4.1.1 Head of Delegation. The head of delegation is responsible for guiding the delegation and for presenting the U.S. position, taking into account the guidelines contained in 4.1.3.

4.1.2. Delegation Members. Members should assist the head of delegation wherever possible to ensure the success of U.S. participation in the meeting and should accept such responsibilities as are assigned, taking into account the guidelines contained in 4.1.3.

4.1.3 Participation Guidelines. Delegates to standards meetings represent the public interest of the United States. Serving the public interest requires a consideration of the viewpoints and objectives of all affected parties and the choice of alternatives which promise to yield the greatest economic and societal benefits to the United States. Participation should be guided by the following points.

4.1.3.1 Unforeseen Matters. At the discretion of the head of delegation, unforeseen matters which arise during the meeting should be addressed by the delegation. If the delegation cannot agree on a position on-the-spot, the head of delegation should either seek time to obtain instructions from the lead agency, or abstain from expressing a U.S. point of view.

4.1.3.2 Unauthorized Personnel. Only persons named as members of the delegation should participate in the work of the delegation. There may be instances when qualified American citizens are at the site of the meeting, and the head of delegation may wish to consult them on technical matters. Such consultation is permissible, but the persons may not be accredited or speak as members of the U.S. delegation without expressed prior authority from the lead agency.

4.1.3.3 Press/Media Relations. The head of delegation is responsible for any press, media, or public statements of the delegation. Except as specifically instructed to the contrary, the head of delegation is under no obligation to make any public statements regarding the meeting or on actions or positions taken by the delegation during the meeting. Public statements to the press/media should be made only after careful deliberation, keeping the general interests of the United States in mind. Where possible, the head of delegation may wish to consult with Embassy, Consulate, or appropriate Mission officials before making public statements.

4.1.3.4 Meetings in the United States. Arrangements for hosting an international meeting in the United States are likely to require a very long

lead time and may involve considerable expense. The head of delegation should neither invite a meeting of any kind to the United States nor imply that the United States would be willing to host a specific meeting without prior approval as appropriate.

4.1.3.5 *Extraneous Political Issues.* It is the policy of the United States Government that at standards-related meetings or at conferences of a technical, professional, scientific, or other specialized nature, it is inappropriate to inject extraneous political subjects. Accordingly, the U.S. delegation may not initiate political discussions and should oppose on a point of order the injection of political matters into the meeting by other delegations.

4.1.3.6 *Commitments of U.S. Participation in International Activities.* At the meeting, careful consideration should be given to any possible commitments that may entail significant expenditures of U.S. resources. This applies in particular to: participation of U.S. persons on committees, working groups, etc., other than for the duration of the meeting; undertaking Secretariat duties or committee chairmanships; and, hosting of meetings in the United States. The U.S. delegation should make tentative commitments only when necessary. In such cases, care should be taken to ensure that the commitments being made are clearly understood as tentative pending official confirmation.

4.1.3.7 *Expression of Personal Opinion.* Delegates should refrain from publicly or privately expressing opinions on U.S. policies or programs not germane to the meeting. When personal opinions, germane to the meeting are expressed, they should be clearly identified as personal and unofficial.

4.1.3.8 *Presentation of U.S. Positions.* As stated in 4.1.1, the head of delegation is responsible for presenting the U.S. position during the meeting. During the meeting, members of the U.S. delegation should not speak on behalf of the delegation without the approval of the head of delegation.

4.2 *Voting Guidelines.* During certain international standards meetings, entire standards are approved by ballot and the U.S. delegation will be expected to vote on adoption of a standard(s). The procedures of international standards bodies generally require approval of draft international standards at a number of successive levels (e.g., at the subcommittee, committee, and final or plenary level) before final adoption. The following guidelines for establishing U.S. positions on approval of draft standards are intended as a step towards a unified Federal Government approach to the

development and use of international standards.

4.2.1 *Voting "Yes" to Approve Draft Standards.* Subject to the guidelines concerning trade barriers in section 3.4, consider voting "Yes" to approve an entire draft standard under any one of the following circumstances:

(a) If there is a U.S. national standard (a standard generally accepted within the U.S.), or a relevant regulation, or Federal agency policy which can be considered to be equivalent to the international document under consideration.

(b) If any conflict between the international document and U.S. practice (standard, regulation or policy) is such that the U.S. practice could be modified to conform without losing equivalence. In such cases the affirmative vote should be accompanied by a statement that, "the U.S. affirmative vote recognized the following minor technical additions, or changes, which may be included in the national standard, regulation or policy."

(c) If no relevant U.S. standard, regulation or policy exists and the international document is technically acceptable and could be used to develop national standards.

4.2.2 *Voting "No" to Disapprove Draft Standards.* Consider voting "No" to not approve an entire draft standard under any one of the following circumstances:

(a) If the international document is considered to be not equivalent to or in clear conflict with a U.S. national standard, regulation of Federal agency policy.

(b) The international document is not technically acceptable.

(c) If a U.S. standard, regulation or policy exists which differs from the international document only because the national practice (standard, regulation or policy) includes additional or more stringent requirements. In such a case, the U.S. Vote should be accompanied by comments pointing out that additional requirements must be met to satisfy the national practice.

(d) The international document unnecessarily creates a barrier to domestic or international trade, or impedes innovation or technological progress.

Reasons must be given for a negative vote. The U.S. vote must, therefore, be accompanied by reasons for the negative vote, such as exceptions and/or additions that will be required to conform with our safety practices or regulations.

4.2.3 *Voting to "Abstain" on Draft Standards.* Consider "Abstaining" on

an entire draft standard under any one of the following circumstances:

(a) If the international document is considered to be of little interest to the U.S.

(b) If no U.S. standard, regulation or Federal agency policy exists and there is no intent to develop such.

(c) If no consensus position can be established on the international document.

4.2.4 *Exceptions.* Exceptions to the above stated voting guidelines should be carefully considered and based on a consensus.

5. *Post Meeting Responsibilities.* The delegation should prepare a written report to provide basic information with which to evaluate the results of the meeting and to plan for future meetings.

5.1 *Report of the Delegation.* The head of delegation should be responsible for preparing a report on the meeting within thirty (30) days of the close of meeting. As a minimum, the report should provide the following information:

(a) Title of the meeting, site, and inclusive dates.

(b) Meeting agenda as finally adopted.

(c) List of participants.

(d) Summary of the work of the meeting including titles of draft standards discussed, major issues presented (technical, procedural, or administrative), actions approved, and major positions taken by the delegation.

(3) Conclusions of the delegation as regards the work and accomplishments of the meeting from the point of view of U.S. interests (e.g., U.S. positions versus decisions of the meeting as a whole).

(f) Recommendations of the delegation as regards the nature and scope of U.S. participation in future meetings and follow-up actions needed to ameliorate significant problems, particularly those concerning the possible negative impact of any standards requirements on existing or future U.S. trade.

5.2 *Distribution of Report.* As a minimum the report should be distributed to the lead agency and to each delegate. When problems of a trade nature have been identified or when the delegation has voted *not* to approve an entire draft standard based on the voting guidelines in section 4.2, the report should be sent to the appropriate Technical Office within the Department of Commerce or Department of Agriculture. Circulation of the report should also be made to any U.S. interests that were consulted in the development of positions and, particularly, to U.S. voluntary standards bodies involved in activities related to the subjects covered in the meeting

Section II—Guidelines for Participation by U.S. Government Agencies, Employees, or Representatives in International Standards-Related Organizations in which the U.S. Government is not the Official U.S. Member-Body

1. *Scope.* These guidelines apply to participation by U.S. Government agencies, employees, or representatives in international standards activities in which the U.S. Government is not the official U.S. member-body, such as in the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC). The guidelines supplement OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards," which establishes policy to be followed by executive branch agencies in working with voluntary standards organizations.

2. *Authorization.* In accordance with OMB Circular A-119, agencies and their employees are encouraged to participate in the activities of international standards bodies and standards-developing groups when such participation is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget limitations.

3. *Role.* U.S. Government agencies and their employees should assist the U.S. member-body in ensuring effective participation and representation of U.S. interests in international standards bodies and standards-developing groups. Such assistance generally falls into one or more of the following types of international standards-related activities.

3.1. *Secretariat of an International Standards Activity.* A U.S. Government agency may be designated by the U.S. member-body to function as secretariat of an international standards committee, subcommittee, working group or task force.

3.2. *Administrator/Participant in an Advisory Group.* A U.S. Government agency may be requested by the U.S. member-body to function as administrator of an advisory group responsible for coordinating U.S. participation in an international standards activity. Such an advisory group is normally constituted to bring together all interested parties (public and private) in an international standards activity for the purpose of guiding U.S. participation in that activity. Similarly, agencies or their employees may be asked by the U.S. member-body, or designated advisory

group administrator, to participate as a member or officer of the advisory group.

3.3. *Delegate to an International Standards Meeting.* U.S. Government employees may be invited by the U.S. member-body, or designated advisory group administrator, to participate as a member or head of delegation assembled to represent the member-body during an international standards committee meeting.

4. *Participation Principles.* Participation in international standards activities shall be at all times consistent with the highest standards of personal and professional ethics.

4.1. *Decision to Participate.* Effective participation in international standards activities outlined in sections 3.1 to 3.3 requires much more effort than merely attending meetings. Before accepting responsibility as secretariat or advisory group administrator of an international standards activity, agencies should thoroughly explore the resource implications and match to mission of such activity and make sure that the work can be undertaken and completed in an effective and timely manner. Likewise, agency employees serving as participants in international standards activities should devote adequate time and effort in preparing for meetings and other related activities to assure the development of meaningful and technically sound standards. The participant should inform his/her supervisor of the estimated time to be devoted to these activities and reach an understanding as to the extent and cost of participation, governed by individual workload and other official commitments.

4.2. *Adherence to Policies and Procedures of Member Body.* In all of the activities listed in 3.1 to 3.3, agencies and their employees are responsible for adhering to the guidelines and working procedures of both the parent international standards body and the respective U.S. member-body through which their participation is channeled.

4.3. *Representing the Public Interest.* Agencies and employees involved in international standards activities should represent the public interest of the United States in the broadest sense. The public interest involves the interest of those parties who are substantially affected by the standards under consideration and includes manufacturers and producers, industrial users, distributors and retailers, government agencies, individual consumers, and the public at large. In serving the public interest, one promotes the general or national welfare rather than the self-interest of private individuals or organizations.

4.4. *Consideration of Balanced Representation.* Agencies responsible for administering international standards committee secretariats or advisory groups which develop U.S. input to international standards committees should seek a balance of viewpoints. In those cases where an international standard may measurably affect trade, or which may be proposed for adoption as law or regulation within the United States, it is particularly important to seek representation from the affected community (e.g., industry, other agencies, State and local governments, labor, universities, consuming public). Similarly, agency employees who participate on U.S. advisory groups, or as members of U.S. delegations preparing positions on proposed international standards, should offer to assist the responsible parties in assuring that balanced representation has been considered and sought.

4.5. *Coordination of Government Viewpoint.* There are occasions when Government participants from different agencies are members of the same standards advisory group or serve together as member of a U.S. delegation to an international standards meeting. Generally, their presence is recognition of professional expertise and competence in a particular subject area and/or recognition of differing roles played by their agencies in the subject area. Such participants may even represent different disciplines (chemist versus economist). In such instances it is entirely possible for views to be expressed which are different and which reflect the differing roles of the agencies involved. When this occurs, the participants should try to resolve substantive differences, particularly if they have a bearing on existing law or regulation. If the differences are serious and cannot be resolved by the involved participants, they should be brought to the attention of higher management within the involved agencies.

4.6. *Prevention of Trade Barriers.* The Government participant should be mindful that a standard may, if improperly written, create an unnecessary barrier to trade. Likewise, the participant should also be aware that some standards may be written in such a way as to impede innovation and technological progress and should strive to provide standards that do not unnecessarily hinder innovative processes and technological advances when they are in the public interest. In general, standards based on performance criteria are less likely to pose competitive concerns than design.

material, or construction criteria. Accordingly, preference should be given to performance criterion whenever they reasonably may be used in lieu of design, material, or construction criterion.

4.7. Technical Quality of Standards. It is particularly important that a standard under development is technically sound, within the operating scope of the organization and meets defined needs of the member nations. This may require that the Government representatives consult with other Government experts or with persons in other organizations who are not directly involved with the standard under consideration. Where a standard does not meet a particular set of needs or is not technically sound in the view of the Government participants, he/she should work with the committee to make the necessary corrections. If unsuccessful, the participant should oppose the adoption of the standard and report such action to agency management.

4.8. Voting, When Authorized. In accordance with OMB Circular A-119, Government participants may vote at each stage of standards development unless specifically prohibited from doing so by the head of the agency or that official's designee. The procedures of international standards bodies generally require approval of draft international standards at a number of successive levels (e.g., at the subcommittee, committee, and final or plenary level) before final adoption. The following voting guidelines relate to agency participation in technical advisory groups to international standards committees or in U.S. delegations to international standards committee meetings. The guidelines recognize the policy that U.S. positions relative to international standards activities are developed through a consensus of the participants.

4.8.1 Voting "Yes" to Approve Draft Standards. Subject to the guidelines concerning trade barrier in section 4.6, consider voting "Yes" to approve an entire draft standard under any one of the following circumstances:

(a) If there is a U.S. national standard (a standard generally accepted within the U.S.), or a relevant regulation, or Federal agency policy which can be considered to be equivalent to the international document under consideration.

(b) If any conflict between the international document and U.S. practice (standard, regulation or policy) is such that the U.S. practice could be modified to conform without losing equivalence. In such cases the affirmative vote should be accompanied

by a statement that, "the U.S. affirmative vote recognizes the following minor technical additions, or changes, which may be included in the national standard, regulation or policy."

(c) If no relevant standard, regulation or policy exists and the international document is technically acceptable and could be used to develop national standards.

4.8.2 Voting "No" to Disapprove Draft Standards. Consider voting "No" to not approve an entire draft standard under any one of the following circumstances:

(a) If the international document is considered to be not equivalent to or in clear conflict with a U.S. national standard, regulation or Federal agency policy.

(b) The international document is not technically acceptable.

(c) If a U.S. standard, regulation or policy exists which differs from the international document only because the national practice (standard, regulation or policy) includes additional or more stringent requirements. In such a case, the U.S. vote should be accompanied by comments pointing out that additional requirements must be met to satisfy the national practice.

(d) The international document unnecessarily creates a barrier to domestic or international trade, or impedes innovation or technological progress.

Reasons must be given for a negative vote. The U.S. vote must, therefore, be accompanied by reasons for the negative vote, such as exceptions and/or additions that will be required to conform with our safety practices or regulations.

4.8.3 Voting to "Abstain" on Draft Standards. Consider "Abstaining" on an entire draft standard under any one of the following circumstances:

(a) If the international document is considered to be of little interest to the U.S.

(b) If no U.S. standard, regulation or Federal agency policy exists and there is no intent to develop such.

(c) If no consensus position can be established on the international document.

4.8.4 Exceptions. Exceptions to the above stated voting guidelines should be carefully considered and based on a consensus.

4.8.5 Registering a Dissenting Viewpoint. Government participants may be confronted with the situation where they consider a proposed U.S. vote as being in conflict with the public interest, the interests of the Federal Government, and/or their own professional judgment. Should such a conflict exist, participants should

attempt to resolve them within the framework of the advisory group or delegation on which they serve. If unsuccessful, participants should make their position clear in writing to the U.S. member-body for the particular standards organization in question and inform their agency of the perceived conflict.

4.9. Patents. While a standard may include a product incorporating a device or process which is patented, it is undesirable for a standard to be written in such a way as to require the use of the patented device or process in order to be in conformance with the standard. Normally this problem can be avoided by writing standards based on performance criteria rather than design material, or construction criteria. There may be occasions, however, where there is a great need for a particular standard to be written to specify a patented item. Most standards organizations have patent policies which require that if an item which is patented is included in a standard, the owner of a patent must declare that the patent is available for unrestricted licensing under reasonable terms and conditions. Government participants should familiarize themselves with the patent policies of the organizations in which they are participating, and discuss them with their agency counsel should there be any questions.

5. Reports. Government participants who serve as members of U.S. delegations to international standards meetings should prepare a written report on their participation within thirty (30) days after the close of the meeting. Distribution of the report depends upon agency procedures covering such matters. As a minimum, the report should cover important actions and decisions taken during the meeting. Where problems are encountered, particularly as regards a U.S. vote on a standard, participants should consider sending a copy of their report to the appropriate Technical Office identified on page 3.

Guidelines for Federal Agency Use of Private Sector Third-Party Certification Programs

O. Introduction

When purchasers receive a product or service, they may seek assurance that it conforms to a specified standard or specification. The process by which such assurance is provided is referred to as certification. These procedures are intended to provide guidelines for Federal agency acceptance and use of private sector third-party certification.

U.S. DEPT. OF COMM. BIBLIOGRAPHIC DATA SHEET <i>(See instructions)</i>	1. PUBLICATION OR REPORT NO. NBSIR 84-2992	2. Performing Organ. Report No.	3. Publication Date
4. TITLE AND SUBTITLE Guidelines for NBS Standards Committee Participants			
5. AUTHOR(S) Donald R. Mackay, Coordinator			
6. PERFORMING ORGANIZATION <i>(If joint or other than NBS, see instructions)</i> NATIONAL BUREAU OF STANDARDS DEPARTMENT OF COMMERCE WASHINGTON, D.C. 20234		7. Contract/Grant No. 8. Type of Report & Period Covered	
9. SPONSORING ORGANIZATION NAME AND COMPLETE ADDRESS <i>(Street, City, State, ZIP)</i>			
10. SUPPLEMENTARY NOTES <input type="checkbox"/> Document describes a computer program; SF-185, FIPS Software Summary, is attached.			
11. ABSTRACT <i>(A 200-word or less factual summary of most significant information. If document includes a significant bibliography or literature survey, mention it here)</i> This document provides guidance to NBS employees who participate in standards development activities of private sector organizations like ASTM, ASME and IEEE. It provides basic information concerning appointments to committees, funding of participation and the need for coordination with other NBS participants and other Federal participants. It also emphasizes the need to keep management informed regarding sensitive issues.			
12. KEY WORDS <i>(Six to twelve entries; alphabetical order; capitalize only proper names; and separate key words by semicolons)</i> Committee participation; Federal standards policy; standards; standards committees; standards participation			
13. AVAILABILITY <input type="checkbox"/> Unlimited <input checked="" type="checkbox"/> For Official Distribution. Do Not Release to NTIS <input type="checkbox"/> Order From Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. <input type="checkbox"/> Order From National Technical Information Service (NTIS), Springfield, VA. 22161		14. NO. OF PRINTED PAGES 36 15. Price \$8.50	

